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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940 41

No. 64 3

THE TIMES-MIRROR COMPANY AND I. D. HOTCHKISS, PETITIONERS,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STAT OF CALIFORNIA

PETITION FOR CERTIORARI FILED MAY 4, 1940.

CERTIORARI GRANTED JUNE 3, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No.

THE TIMES-MIRROR COMPANY AND L. D. HOTCHKISS, PETITIONERS,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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IN SUPREME COURT OF CALIFORNIA

L. A. No. 16928

THE TIMES-MIRROR COMPANY, a Corporation, and L. D. HOTCHKISS, Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

PETITION FOR WRIT OF REVIEW

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the State of California:

Come now The Times-Mirror Company, a corporation, and L. D. Hotchkiss, petitioners herein, and file this their Petition for Writ of Review, and in support of said petition respectfully allege:

I

The petitioner The Times-Mirror Company is and at all times herein mentioned has been a corporation organized and doing business under and by virtue of the laws of the State of California.

The Times-Mirror Company is now and at all times herein mentioned was the publisher of that certain daily newspaper printed, published and circulated at and from the plant and place of business of said The Times-Mirror Company, in the City of Los Angeles, County of Los Angeles, State of California, known as "Los Angeles Times."

The petitioner L. D. Hotchkiss is and at all times herein mentioned has been resident in the County of Los Angeles, California, and managing editor of said newspaper known as "Los Angeles Times."

[fol. 2]

II

On May 13, 1938, one J. Louis Elkins, Secretary of the Los Angeles Bar Association, subscribed and swore to a certain affidavit, which affidavit on June 3, 1938, was presented by Allen W. Ashburn, Esq., Michael G. Luddy, Esq., Isaac Pacht, Esq., and Arnold Praeger, Esq., as attorneys for the Los Angeles Bar Association, to the presiding judge of said Superior Court, and thereafter on said last men-

tioned date said affidavit was filed by the clerk of said court. A full, true and correct copy of said affidavit is attached hereto and marked "Petitioners' Exhibit No. 1."

III

Upon the presentation of said affidavit to said presiding judge of said Superior Court, and on said 3rd day of June, 1938, said presiding judge of said Superior Court made and entered an order wherein and whereby The Times-Mirror Company, Harry Chandler, Norman Chandler and L. D. Hotchkiss, were ordered to appear before said court, Department 1 thereof, on the 23rd day of June, 1938, at the hour of 10 o'clock A. M., then and there to show cause why they and each of them should not be adjudged guilty of contempt of court and punished therefor. A full, true and correct copy of said Order to Show Cause is attached hereto and marked "Petitioners' Exhibit No. 2."

Thereafter, and in response to said Order to Show Cause, your petitioners appeared before said Superior Court, by and through their attorneys, at the time and place designated in said order hereinbefore referred to. Thereupon said matter was continued until July 1, 1938, at which time the presiding judge of said Superior Court duly made an order transferring said proceedings to Department 34 of said court. Thereafter the judge sitting in said Department 34, duly made an order fixing July 5, 1938, at the hour of 10 [fol. 3] o'clock A. M. in said Department 34 as the time and p' ce for the hearing of said matter.

The matter came on regularly for hearing at said time and place upon said Order to Show Cause and said affidavit of J. Louis Elkins. Thereupon the respondents, and each of them:

1. Moved the court that the proceedings be entitled "People of the State of California vs. The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler and L. D. Hotchkiss, respondents in contempt."

2. Objected to any party other than the State of California prosecuting the proceeding and objected to any attorney appearing or acting or being permitted to appear or act as prosecuting attorney therein other than the Attorney General of the State of California or the District Attorney of Los Angeles County.

3. Objected to the Los Angeles Bar Association or any committee of said association or anyone appearing or claiming to appear as attorney for said association or for any committee of said association appearing or acting or being permitted to appear or act as attorney or attorneys for the prosecution of the proceeding.

4. Moved the court for an order directing that the District Attorney for the County of Los Angeles and the Attorney General for the State of California be notified of the proceeding and for a further order directing that no other or further proceeding be had or taken herein until said District Attorney or said Attorney General shall appear herein as attorney for the prosecution of this proceeding.

5. Objected to any proceedings being taken herein unless and until the People of the State of California are made a party hereto and appear herein by the proper officer of said state in that behalf duly authorized.

[fol. 4] 6. Objected to the Los Angeles Bar Association or any committee of said association or anyone appearing or claiming to appear as attorney for said association or for any committee of said association controlling or directing either as attorney of record or otherwise the prosecution.

Said objections and motions were made upon each of the following grounds, to wit:

(a) This is a prosecution for a crime, to wit, criminal contempt of court.

(b) Prosecution for crime must be in the name of The People of the State of California.

(c) The District Attorney is the public prosecutor and must attend the court and conduct on behalf of the people all prosecutions for public offenses.

(d) Neither the Los Angeles Bar Association nor any association or person other than The People of the State of California may prosecute this proceeding.

Thereupon on said 5th day of July, 1938, following the presentation of argument by counsel for respondents (petitioners herein) in support of the motions and objections and following the presentation of argument by counsel for

the Los Angeles Bar Association in opposition to the motions and objections, said motions and objections were, and each one thereof was, denied and overruled. Counsel for the respondents, and each one thereof (petitioners herein), took and saved an exception to the rulings of the court on each of said motions and each of said objections.

At the time of filing said affidavit of J. Louis Elkins, Secretary of the Los Angeles Bar Association, on June 3, 1938, no order of said Superior Court was made or entered, and since said June 3, 1938, no order of said Superior Court or [fol. 5] of any judge thereof has been made or entered in this proceeding, or in the records of said court, directing, requesting or authorizing said Los Angeles Bar Association, or said attorneys for said Los Angeles Bar Association, to file said affidavit or, after the filing of said affidavit, to prosecute this proceeding on behalf of said court or any department thereof or on behalf of any judge sitting in any department of said court.

IV

Prior thereto, on, to wit, June 28, 1938, your petitioners filed with the clerk of said Superior Court a demurrer to the sufficiency of said affidavit, together with points and authorities in support thereof. A full, true and correct copy of said demurrer (points and authorities omitted) is attached hereto and marked "Petitioners' Exhibit No. 3."

Thereafter, on, to wit, July 5, 1938, and subsequently, said demurrer was argued, and thereafter, on July 14, 1938, submitted. Upon consideration, said Superior Court on, to wit, August 18, 1938, overruled said demurrer to the First, Third and Fifth Counts of said affidavit and sustained said demurrer without leave to amend to the Second and Fourth Counts thereof, and made its further order setting said matter for trial on Thursday, August 25, 1938, in said Department 34.

V

At the time of argument on said demurrer, in addition to other contentions advanced, your petitioners and each of them urged, through their counsel, that the proceedings herein were violative of the rights guaranteed to your petitioners by the First and Fourteenth Amendments to the United States Constitution, in that an adjudication that petitioners were guilty of a contempt of court for the pub-

[fol. 6] lication of the articles set forth in said affidavit would abridge petitioners' right of freedom of speech and of the press, and would deprive petitioners of their liberty and property without due process of law. A full, true and correct recitation of the language in which said federal constitutional question was raised by counsel for your petitioners herein is attached hereto and marked "Petitioners' Exhibit No. 4."

VI

Thereafter, on August 22, 1938, The Times-Mirror Company, Harry Chandler, Norman Chandler and L. D. Hotchkiss, filed verified answers to said Order to Show Cause; full, true and correct copies of said answers are attached hereto and marked Petitioners' Exhibits No. 5, No. 6, No. 7 and No. 8, respectively. Petitioners on said August 22, 1938, also filed in response to said Order to Show Cause the affidavit of Harry Chandler and the affidavit of F. B. Yoakum, Jr. Said affidavits were made and filed on behalf of each of your petitioners herein. True copies of said affidavits are attached hereto and marked Petitioners' Exhibits No. 9 and No. 10, respectively.

VII

On Thursday, August 25, 1938, said matter came on regularly for hearing in said Department 34 upon said Order to Show Cause, and Counts One, Three and Five of said affidavit of J. Louis Elkins, and upon said answers and said affidavits of respondents (petitioners herein); the prosecution of said proceedings being conducted by counsel on behalf of Los Angeles Bar Association; testimony was taken, evidence was introduced, arguments were heard and the matter submitted for decision; whereupon, on August 31, 1938, said Superior Court, Department 34 thereof, made, signed and filed, and on September 1, 1938, caused to be entered, its judgment and order wherein and whereby

[fol. 7] "1. The Court finds that the allegations of counts (1), (3), and (5) of said affidavit of J. Louis Elkins respecting the respondent The Times-Mirror Company are true and that the said respondent, The Times-Mirror Company, a corporation, is guilty of contempt of court as specified, and in the particulars set forth in the order to show cause herein and in the said affidavit of J. Louis Elkins in counts

(1), (3), and (5) thereof, and that as punishment therefor, the Court orders that the said respondent, The Times-Mirror Company, a corporation, shall pay a fine of $100.00 on count (1), $100.00 on count (3), and $300.00 on count (5), as set forth in said affidavit, making in all the sum of $500.00, for which amount let execution issue.

"2. The Court finds the respondents Harry Chandler and Norman Chandler not guilty of contempt of court as to all three of said counts in said affidavit.

"3. The Court finds the respondent L. D. Hotchkiss not guilty of contempt of court on counts (3) and (5) as set forth in said affidavit.

"4. The Court finds that the allegations of count (1) as set forth in said affidavit of J. Louis Elkins respecting the respondent L. D. Hotchkiss are true and finds the respondent L. D. Hotchkiss is guilty of contempt of court as specified, and in the particulars set forth in the order to show cause herein and in count (1) of said affidavit of J. Louis Elkins, and orders him, the said L. D. Hotchkiss, to pay a fine of $100.00 on said count (1), and that in default of payment thereof, the said L. D. Hotchkiss shall stand committed to the Sheriff of the County of Los Angeles, State of California, and, until such fine is paid, he shall be imprisoned in the county jail of said county at the rate of one days' imprisonment for each $2.00 of said fine."

A full, true and correct copy of said order or judgment is attached hereto, marked "Petitioners Exhibit No. 11."

VIII

No affidavits or verified pleadings were filed in said proceedings against your petitioners, or either of them, other than the aforesaid affidavit of J. Louis Elkins.

IX

Your petitioners are informed and believe, and upon such information and belief allege the fact to be, that said Supe- [fol. 8] rior Court had no jurisdiction to make said order or judgment for the reason:

First. That the proceedings were not properly entitled and that the motion of the petitioners herein made at the

inception of the hearing to have said proceedings properly entitled was denied by the court.

Second. That the Los Angeles Bar Association and its attorneys were without authority to prosecute said proceedings and that the objections of the petitioners to said Bar Association and its attorneys prosecuting said proceedings, and the motions of the petitioners to have the Attorney General of the State of California or the District Attorney of the County of Los Angeles notified of the pendency of said proceedings, which objections and motions were made at the inception of said proceedings, were denied and overruled by the trial court.

Third. That said proceedings were instituted and prosecuted by the Los Angeles Bar Association and its attorneys and that no order of said court or of any judge thereof was made or entered authorizing the institution or prosecution of said proceedings by said Los Angeles Bar Association or its attorneys.

Fourth. The matters alleged in said affidavit of J. Louis Elkins did not state facts constituting a contempt of court by your petitioners, or either of them.

Fifth. The evidence received during the hearing of said proceedings did not establish facts sufficient to prove that a contempt of court had been committed by your petitioners, or either of them.

Sixth. Under the constitution and statutes of this state a court is not authorized to proceed summarily in construc- [fol. 9] tive contempt proceedings; right of trial by jury is guaranteed the defendants in this as in other criminal proceedings.

X

Your petitioners have not, nor has either of them, any appeal from said order or judgment, nor has either of them a plain, speedy and adequate remedy in the premises other than by a writ of review. Your petitioners and each of them are parties beneficially interested in this proceeding.

Your petitioners are informed and believe, and upon such information and belief state the fact to be, that said Superior Court, in and for the County of Los Angeles, and said J. Louis Elkins, the affiant named in the aforesaid affidavit (Petitioners' Exhibit No. 1), are parties in interest.

XI

This application is made to the Supreme Court of the State of California upon the following grounds:

1. Said appeal raises important and vital questions of state and federal constitutional law which ought to be determined and decided by this court.

2. It is of vital importance to your petitioners, The Times-Mirror Company and L. D. Hotchkiss its Managing Editor, that the court of last resort of this state definitely determine and define at an early date the limits of proper editorial comment by newspapers upon matters pending in the courts which are of great public interest, importance and notoriety.

3. Such early determination by the Supreme Court is necessary so that in future publications of the Los Angeles Times its publisher and editors may comply with their obligation and duty to the public to print and publish "the facts [fol. 10] with enlightened comment" relating to judicial proceedings, but avoiding comment, editorially or otherwise, which would render your petitioners or the publisher and editors of said Los Angeles Times subject to contempt proceedings.

4. Because "The constitution of every state in the Union guarantees to every citizen the right to freely speak, write, and publish his sentiments on all subjects, and prohibits the passage of any law 'to restrain or abridge the liberty of speech or of the press'" (In re Shortridge, 99 Cal. 526, 533), the problem presented herein for determination is of vital importance and interest to all other newspapers and publishers and the readers thereof in the State of California and elsewhere throughout the United States.

5. The precise question presented for solution by this petition has never been passed upon by any appellate tribunal of the State of California.

Wherefore, your petitioners make application to this Honorable Court to grant them and each of them a writ of review requiring said Superior Court of the State of California, in and for the County of Los Angeles, to certify fully to this Honorable Court, at a specified time and place, a transcript of the record and proceedings in said Superior

Court wherein your petitioners were adjudged guilty of contempt of said court as aforesaid, to the end that said order or judgment be reviewed by this Honorable Court, and that such order or judgment be annulled and be adjudged void and of no effect, and that in the meantime all proceedings for the execution of said order or judgment be stayed.

Cosgrove & O'Neil, T. B. Cosgrove, F. B. Yoakum, Jr., Attorneys for Petitioners, The Times-Mirror Company, a corporation, and L. D. Hotchkiss.

[fol. 11] EXHIBIT No. 1

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

In the Matter of THE TIMES-MIRROR COMPANY, a Corporation, HARRY CHANDLER, NORMAN CHANDLER, and L. D. HOTCHKISS, Respondents, in Contempt

AFFIDAVIT OF J. LOUIS ELKINS

STATE OF CALIFORNIA,
County of Los Angeles, ss:

J. Louis Elkins, being by me first duly sworn, deposes and says:

First Count

I

That he is the Executive Secretary of Los Angeles Bar Association.

That The Times-Mirror Company is now and at all times herein mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the County of Los Angeles, State of California.

That said The Times-Mirror Company is now and at all times herein mentioned was the publisher of that certain daily newspaper printed, published and circulated at and from the plant and place of business of said The Times-Mirror Company, in the City of Los Angeles, County of

Los Angeles, State of California, known as "Los Angeles Times."

That said "Los Angeles Times" has now and at all times herein mentioned had a circulation of over 200,000 copies [fol. 12] per day, most of which said copies of said paper are now and at all times mentioned herein were circulated and read in the City of Los Angeles and the County of Los Angeles, State of California.

That Harry Chandler is now and at all times herein mentioned was the president of said The Times-Mirror Company.

That Norman Chandler is now and at all times herein mentioned was the general manager of said The Times-Mirror Company.

That L. D. Hotchkiss is now and at all times herein mentioned was the managing editor of said Los Angeles Times.

II

That on and before the 21st day of December, 1937, there was pending and undetermined and known to the respondents and each of them to be pending and undetermined, in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "The People of the State of California, versus William Busick, et al.", Criminal Number 67121 in said court, in which said action the defendants and each of them were charged with a felony, towit, conspiracy to violate Sections 418 and 594 of the Penal Code of the State of California. That, on the 20th day of December, 1937, certain of the defendants in said action were found guilty, as charged, by the jury impaneled in said case, and on said 20th day of December, 1937, the judge who presided at the trial of said action set December 22, 1937, as the day and date for pronouncing judgment and sentencing the defendants so convicted.

III

That on the said 21st day of December, 1937, the respondents, The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, and each [fol. 13] of them, caused to be printed and published and circulated in the City of Los Angeles and elsewhere an issue of said Los Angeles Times; that in said issue of said Los Angeles Times, there was printed and published a cer-

tain editorial entitled "Sit-Strikers Convicted," and which said editorial is in words and figures as follows, towit:

"The verdict of a jury finding guilty the twenty-two sit-strikers who led the assault on the Douglas plant last February, will have reverberations up and down the Pacific Coast and in points farther east.

"The verdict means that Los Angeles is not Los Angeles, that the city is aroused to the danger of davebeckism, and that no kind of union terrorism will be permitted here.

"The verdict may have a good deal to do with sending Dave Beck back to Seattle. For, while the United Automobile Workers have no connection with Beck, their tactics and his are identical in motive; and if Beck can be convinced that this kind of warfare is not permitted in this area he will necessarily abandon his dreams of conquest.

"Already the united farmers and ranchers have given Beck a severe setback. The Hynes hay market is still free and it has been made plain that interference with milk deliveries to Los Angeles will not be tolerated.

"Dist.-Atty. Fitts pledged his best efforts to prevent and punish union terrorism and racketeering in a strong radio address, and followed it up yesterday with a statement congratulating the jury that convicted the sit-downers and the community on one of the 'most far-reaching verdicts in the history of this country.'

"In this he is correct. It is an important verdict. For the first time since the present cycle of labor disturbances began, union lawlessness has been treated as exactly what it is, an offense against the public peace punishable like any other crime.

"The seizure of property by a militant minority, which arrogated to itself the right of dictating not only to employers, but to other workers not in sympathy with it, what should be the terms and conditions of working, has proved to be within the control of local peace officers and authorities.

[fol. 14] "Nobody ran off to Washington to get this affair handled. It was attended to right here.

"Government may have broken down in other localities; whole States may have yielded to anarchy. But Los Angeles county stands firm; it has officers who can do their duty and courts and juries which can function.

"So long as that is the case, davebeckism cannot and will not get control here; nor johnlewisism either."

IV

That said editorial and the statements contained therein referred to and were intended by the respondents and each of them to refer to said action number 67121 and to the defendants found guilty therein and to the verdict of the jury in said action rendered on the 20th day of December, 1937, as aforesaid, and said editorial and the statements contained therein were intended by the respondents and each of them to be understood by persons reading said editorial to refer to said action number 67121 and to the defendants therein and to the verdict of the jury in said action.

V

That the statements contained in said editorial and the publishing thereof in said Los Angeles Times as aforesaid were intended by the respondents and each of them and were in and of themselves calculated and had an inherent tendency to:

(1) Interfere with, influence, sway and control the proceedings in said action number 67121 and interfere with, sway, control, embarrass and influence the actions and decisions of the judge who presided at the trial of said action and whose duty it would be to pronounce judgment and sentence upon the defendants found guilty by the verdict [fol. 15] of the jury therein, and to interfere with, sway, control, embarrass, and influence the actions and decisions of said court in connection with rulings or orders to be made by it on any motions or other proceedings which might legally be made or taken or prosecuted subsequent to the conviction of said defendants and subsequent to the date of the publication of said editorial.

(2) Interfere with the orderly and due administration of justice in said action.

Count Two

I

That he is the Executive Secretary of Los Angeles Bar Association.

That The Times-Mirror Company is now and at all times herein mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of

California, with its principal place of business in the County of Los Angeles, State of California.

That said The Times-Mirror Company is now and at all times herein mentioned was the publisher of that certain daily newspaper printed, published and circulated at and from the plant and place of business of said The Times-Mirror Company, in the City of Los Angeles, County of Los Angeles, State of California, known as "Los Angeles Times."

That said "Los Angeles Times" has now and at all times herein mentioned had a circulation of over 200,000 copies per day, most of which said copies of said paper are now and at all times mentioned herein were circulated and read in the City of Los Angeles and the County of Los Angeles, State of California.

[fol. 16] That Harry Chandler is now and at all times herein mentioned was the president of said The Times-Mirror Company.

That Norman Chandler is now and at all times herein mentioned was the general manager of said The Times-Mirror Company.

That L. D. Hotchkiss is now and at all times herein mentioned was the managing editor of said Los Angeles Times.

II

That on and before the 13th day of February, 1938, there was pending and undetermined and known to the respondents and each of them to be pending and undetermined, in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "The People of the State of California versus Paul A. Wright," Criminal Number 70170 in said Court, in which said action the defendant was charged in two counts with a felony, to-wit, murder. That said Paul A. Wright pleaded to both counts of said charge not guilty and not guilty by reason of insanity. That, on the 12th day of February, 1938, the defendant in said action was found guilty of manslaughter on both counts by the jury impaneled in said case, and on said 12th day of February, 1938, the judge who presided at the trial of said action set February 14, 1938, as the day and date for trying the issues raised by the plea of the defendant of not guilty by reason of insanity.

III

That on the 13th day of February, 1938, the respondents, The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, and each of them, caused to be printed and published and circulated in the City of Los Angeles and elsewhere an issue of said Los [fol. 17] Angeles Times; that in said issue of said Los Angeles Times there was printed and published a certain editorial entitled "The Wright Verdict," and which said editorial is in words and figures as follows, to-wit:

"There will be little public disposition to criticise the verdict returned yesterday finding Paul Wright guilty of manslaughter, even on the part of those who find it difficult to reconcile the findings with the evidence.

"A glance backward over the long and discreditable record of verdicts in other somewhat similar cases tends the observer rather to congratulate than to find fault with the Wright jury. Under the spell of courtroom eloquence, men and women unskilled in the law too often yield to the fallacious implication that there are times when one is justified in making his own law and executing it upon the spot. Granting, for the sake of argument, that all that Wright said he saw was true, the offense with which he smeared the memories of his dead wife and his dead friend is not punishable by death nor does the law authorize any private person to prescribe and execute its penalty. It is, of course, conceivable that the sight, if he saw it, may so have upset him mentally as to make his subsequent act less than outright murder but not, in this jury's view at least, a thing inferentially to support and applaud by letting it go unpunished. The 'unwritten law' is a form of social anarchy and any verdict supporting it puts a premium on private vengeance, for real or fancied wrongs, everywhere.

"Unfortunately for the public, this verdict does not end the nauseating case. Aside from appeal, Wright has another chance to escape the consequences of his act under the weird California law which enables him to say to the State: 'I didn't do it, but if I did I was crazy at the time and so ought not to be punished anyway.' Such is the effect of the contradictory but perfectly legal plea of not guilty and not guilty by reason of insanity.

"There is at least some consolation in the fact that the worst is over. Twice-dished dirt has little public interest."

IV

That said editorial and the statements contained therein referred to and were intended by the respondents and each [fol. 18] of them to refer to said action number 70170 and to the defendant found guilty of manslaughter therein and to the verdict of the jury in said action rendered on the 12th day of February, 1938, and to the trial of the issues raised by the plea of the defendant in said action of not guilty by reason of insanity set for February 14, 1938, as aforesaid, and said editorial and the statements contained therein were intended by the respondents and each of them to be understood by persons reading said editorial to refer to said action number 70170 and to the defendant found guilty of manslaughter therein and to the verdict of the jury in said action rendered on the 12th day of February, 1938, and to the trial of the issues raised by the plea of the defendant in said action of not guilty by reason of insanity set for February 14, 1938, as aforesaid.

V

That the statements contained in said editorial and the publishing thereof in said Los Angeles Times as aforesaid were intended by the respondents and each of them and were in and of themselves calculated and had an inherent tendency to:

(1) Interfere with, influence, sway and control the proceedings in said action number 70170 and interfere with, sway, control, embarrass and influence the actions and decisions of the judge who presided at the trial of said action and whose duty it would be to pronounce judgment and sentence upon the defendant if found to be same by the jury therein, and to interfere with, sway, control, embarrass, and influence the actions and decisions of the above entitled court, or any of the judges thereof, in connection with rulings or orders to be made by it or any of said judges on any motions or other proceedings which might legally be [fol. 19] made or taken or prosecuted in said action subsequent to the date of the publication of said editorial.

(2) Interfere with the orderly and due administration of justice in said action.

Count Three

I

That he is the Executive Secretary of Los Angeles Bar Association.

That The Times-Mirror Company is now and at all times herein mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the County of Los Angeles, State of California.

That said The Times-Mirror Company is now and at all times herein mentioned was the publisher of that certain daily newspaper printed, published and circulated at and from the plant and place of business of said The Times-Mirror Company, in the City of Los Angeles, County of Los Angeles, State of California, known as "Los Angeles Times."

That said "Los Angeles Times" has now and at all times herein mentioned had a circulation of over 200,000 copies per day, most of which said copies of said paper are now and at all times mentioned herein were circulated and read in the City of Los Angeles and the County of Los Angeles, State of California.

That Harry Chandler is now and at all times herein mentioned was the president of said The Times-Mirror Company.

That Norman Chandler is now and at all times herein mentioned was the general manager of said The Times-Mirror Company.

[fol. 20] That L. D. Hotchkiss is now and at all times herein mentioned was the managing editor of said Los Angeles Times.

II

That on and before the 14th day of April, 1938, there was pending and undetermined and known to the respondents and each of them to be pending and undetermined in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "The People of the State of California versus Erwin P. Werner and Helen M. Werner," Criminal Number 69273 in said court, in which said action the defendants and each of them were charged with felony in two counts, to-wit, attempt at grand theft and violating Section 653f of the Penal Code.

That on the 12th day of April, 1938, each of the defendants in said action was found guilty as charged, on both counts, by the jury impaneled in said case, and on said 12th day of April, 1938, the said defendants and each of them gave notice of motion for a new trial, and the judge who presided at the trial of said action set April 22, 1938, as the day and date for passing on said motion for a new trial made on behalf of said defendants and each of them and as the day and date for pronouncing judgment and sentencing the defendants so convicted.

III

That on the said 14th day of April, 1938, the respondents, The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, and each of them, caused to be printed and published and circulated in the City of Los Angeles and elsewhere an issue of said Los Angeles Times; that in said issue of said Los Angeles Times, there was printed and published a certain editorial entitled "The Fall of an Ex-Queen," and which said editorial is in words and figures as follows, to-wit:

[fol. 21] "Politics as we know it is an essentially selfish business, conducted in the main for personal profit of one kind or another. When it is of the boss type, it is apt to be pretty sordid as well Success in boss-ship, which is a denial of public rights, necessarily implies a kind of moral obliquity if not an actually illegal one.

"So that it is something of a contradiction of sense if not of terms to express regret that the political talents of Mrs. Helen Werner were not directed to other objectives than those which, in the twilight of her active life, have brought her and her husband to disgrace. If they had been, she would not have been in politics at all and probably would never have been heard of in a public way Her natural flair was purely political; she would have been miscast in any other sphere of activity.

"Mrs. Werner's primary mistake seems to have been in failing to recognize that her political day was past. For years she enjoyed the unique distinction of being the country's only woman boss—and did she enjoy it! In her heyday she had a finger in every political pie and many were the plums she was able to extract therefrom for those who played ball with her. From small beginnings she utilized

every opportunity to extend her influence and to put office-holders and promising political material under obligations to her. She became a power in the backstage councils of city and county affairs and from that place of strategic advantage reached out to pull the strings on State and legislative offices as well.

"Those were the days when Mrs. Werner was 'Queen Helen' and it is only fair to say that to her the power was much more important than the perquisites. When the inevitable turning of the political wheel brought new figures to the front and new bosses to the back, she found her grip slipping and it was hard to take. The several cases which in recent years have brought her before the courts to defend her activities seem all examples of an energetic effort to regain and reassert her onetime influence in high places. That it should ultimately have landed her behind the bars as a convicted bribe-seeker is not illogical. But if there is logic in it, the money meant less to Mrs. Werner than the name of still being a political power, one who could do things with public officials that others could not do. To herself at least she was still Queen Helen."

[fol. 22] IV

That said editorial and the statements contained therein referred to and were intended by the respondents and each of them to refer to said action number 69273 and to the defendant Helen M. Werner found guilty therein and to the verdict of the jury in said action rendered on the 12th day of April, 1938, as aforesaid, and said editorial and the statements contained therein were intended by the respondents and each of them to be understood by persons reading said editorial to refer to said action number 69273 and the defendant Helen M. Werner therein and to the verdict of the jury in said action.

V

That the statements contained in said editorial and the publishing thereof in said Los Angeles Times as aforesaid were intended by the respondents and each of them and were in and of themselves calculated and had an inherent tendency to:

(1) Interfere with, influence, sway and control the proceedings in said action number 69273 and interfere with,

sway, control, embarrass and influence the actions and decisions of the judge who presided at the trial of said action and whose duty it would be to pass upon said motion for a new trial, and in event of its de ial to pronounce judgment and sentence upon the defendants found guilty by the verdict of the jury therein, and to interfere with, sway, control, embarrass, and influence the actions and decisions of said court in connection with rulings or orders to be made by it on any motions or other proceedings which might legally be made or taken or prosecuted subsequent to the conviction of said defendants and the publication of said editorial.

(2) Interfere with the orderly and due administration of justice in said action.

[fol. 23] Count Four

I

That he is the Executive Secretary of Los Angeles Bar Association.

That The Times-Mirror Company is now and at all times herein mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the County of Los Angeles, State of California.

That said The Times-Mirror Company is now and at all times herein mentioned was the publisher of that certain daily newspaper printed, published and circulated at and from the plant and place of business of said The Times-Mirror Company, in the City of Los Angeles, County of Los Angeles, State of California, known as "Los Angeles Times."

That said "Los Angeles Times" has now and at all times herein mentioned had a circulation of over 200,000 copies per day, most of which said copies of said paper are now and at all times mentioned herein were circulated and read in the City of Los Angeles and the County of Los Angeles, State of California.

That Harry Chandler is now and at all times herein mentioned was the president of said The Times-Mirror Company.

That Norman Chandler is now and at all times herein mentioned was the general manager of said The Times-Mirror Company.

That L. D. Hotchkiss is now and at all times herein mentioned was the managing editor of said Los Angeles Times.

II

That on and before the 16th day of April, 1938, there was pending and undetermined and known to the respondents [fol. 24] and each of them to be pending and undetermined in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "John L. 'Jackie' Coogan versus Arthur L. Bernstein, et al.," Civil number 426945. That said action was brought by plaintiff against his mother and his stepfather to obtain an accounting of money alleged to have been earned by him as a motion picture actor while a minor. That said action was commenced on the 11th day of April, 1938, on which said date plaintiff obtained an order appointing a receiver and a preliminary restraining order and an order to show cause, and on said day the complaint, summons, order appointing a receiver, preliminary restraining order and the order to show cause in said action were served upon the plaintiff's mother and stepfather, defendants in said action, and said order to show cause was pending and undetermined on said 16th day of April, 1938.

III

That on the 16th day of April, 1938, the respondents, The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, and each of them, caused to be printed and published and circulated in the City of Los Angeles and elsewhere an issue of said Los Angeles Times; that in said issue of said Los Angeles Times, there was printed and published a certain editorial entitled "Jackie's Millions," and which said editorial is in words and figures as follows, to-wit:

"The legal principle invoked by the mother and stepfather of Jackie Coogan in the battle over Jackie's earnings as a minor is a very old one. The California statute is a lineal descendant of English common law which held that a child's earnings belong exclusively to its father. Our law has been amended so that father and mother have equal rights in such gains. Whether, in Jackie's case, he should inherit part or all of his deceased father's half of the millions involved will be for the courts to decide.

[fol. 25] "Sound as in abstract principle it may be, the law's first enunciators could hardly have foreseen an era in which it would be possible for a Jackie Coogan to earn, in a few years of little boyhood, many times more than most adults can make in a lifetime. That he should have no right to a penny of these earnings and no more voice in their disposal than a trained dog seems almost as fantastic as the earnings themselves.

"Contrary to the general impression and the apparent belief of parents with talented youngsters, the life of a juvenile film prodigy is not an enviable one. It is cast for the most part in an unnatural and artificial setting, devoid of many of the natural pleasures and companionships of childhood and full of hard work of a character which, since children cannot stay children forever, does little or nothing to fit them for later life. That they should be allowed some compensation for these sacrifices for use when their few years of fleeting fame are over seems only fair. At least it will seem so to the millions to whom the wistful waif who was Jackie Coogan in 'The Kid' gave pleasure."

IV

That said editorial and the statements contained therein referred to and were intended by the respondents and each of them to refer to said action number 426945 and said editorial and the statements contained therein were intended by the respondents and each of them to be understood by persons reading said editorial to refer to said action number 426945.

V

That the statements contained in said editorial and the publishing thereof in said Los Angeles Times as aforesaid were intended by the respondents and each of them and were in and of themselves calculated and had an inherent tendency to:

(1) Interfere with, influence, embarrass, sway and control the actions and decisions of said Superior Court of the State of California, in and for the County of Los Angeles, in connection with said cause or with rulings or orders to be made by it on any motions or other proceedings [fol. 26] then pending or which might legally be made or taken or prosecuted in said action number 426945, subsequent to the publication of said editorial.

(2) Interfere with the orderly and due administration of justice in said action.

Count Five

I

That he is the Executive Secretary of Los Angeles Bar Association.

That The Times-Mirror Company is now and at all times herein mentioned was a corporation created, organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the County of Los Angeles, State of California.

That said The Times-Mirror Company is now and at all times herein mentioned was the publisher of that certain daily newspaper printed, published and circulated at and from the plant and place of business of said The Times-Mirror Company, in the City of Los Angeles, County of Los Angeles, State of California, known as "Los Angeles Times."

That said "Los Angeles Times" has now and at all times herein mentioned had a circulation of over 200,000 copies per day, most of which said copies of said paper are now and at all times mentioned herein were circulated and read in the City of Los Angeles and the County of Los Angeles, State of California.

That Harry Chandler is now and at all times herein mentioned was the president of said The Times-Mirror Company.

That Norman Chandler is now and at all times herein mentioned was the general manager of said The Times-Mirror Company.

[fol. 27] That L. D. Hotchkiss is now and at all times herein mentioned was the managing editor of said Los Angeles Times.

II

That on and before the 5th day of May, 1938, there was pending and undetermined and known to the respondents and each of them to be pending and undetermined in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "People of the State of California versus Matthew Shannon and Kennon Holmes," Criminal number 71109 in said court, in

which action the defendants and each of them were charged with a felony, towit, conspiracy to violate Section 245 California Penal Code and assault with a deadly weapon. That on the 22nd day of April, 1938, said defendants in said action were found guilty as charged by the jury impaneled in said case and made application for probation and on the 2nd day of May, 1938, the judge who presided at the trial of said action set June 7, 1938, as the day and date for passing upon the application of the defendants in said action for probation and for pronouncing judgment and sentencing the defendants so convicted.

III

That on the 5th day of May, 1938, the respondents, The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, and each of them, caused to be printed and published and circulated in the City of Los Angeles and elsewhere an issue of said Los Angeles Times; that in said issue of said Los Angeles Times, there was printed and published a certain editorial entitled "Probation for Gorillas?", and which said editorial is in words and figures as follows, towit:

[fol. 28] "Two members of Dave Beck's wrecking crew, entertainment committee, goon squad or gorillas, having been convicted in Superior Court of assaulting nonunion truck drivers, have asked for probation. Presumably they will say they are 'first offenders,' or plead that they were merely indulging a playful exuberance when, with slingshots, they fired steel missiles at men whose only offense was wishing to work for a living without paying tribute to the erstwhile boss of Seattle.

"Sluggers for pay, like murderers for profit, are in a slightly different category from ordinary criminals. Men who commit mayhem for wages are not merely violators of the peace and dignity of the State; they are also conspirators against it. The man who burgles because his children are hungry may have some claim on public sympathy. He whose crime is one of impulse may be entitled to lenity. But he who hires out his muscles for the creation of disorder and in aid of a racket is a deliberate foe of organized society and should be penalized accordingly.

"It will teach no lesson to other thugs to put these men on good behavior for a limited time. Their 'duty' would

simply be taken over by others like them. If Beck's thugs, however, are made to realize that they face San Quentin when they are caught, it will tend to make their disreputable occupation unpopular. Judge A. A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignment to the jute mill."

IV

That said editorial and the statements contained therein referred to and were intended by the respondents and each of them to refer to said action number 71109 and to the defendants found guilty therein and to the application of said defendants for probation and to the pronouncing of judgment and the sentencing of said defendants on the 7th day of June, 1938, as aforesaid, and said editorial and the statements contained therein were intended by the respondents and each of them to be understood by persons reading said editorial to refer to said action number 71109 and to the defendants found guilty therein and to the application [fol. 29] of said defendants for probation and to the pronouncing of judgment and sentencing of said defendants on the 7th day of June, 1938, as aforesaid. That "Judge A. A. Scott" referred to in said editorial was at all times herein mentioned a duly appointed, qualified and acting judge of the Superior Court of the State of California, in and for the County of Los Angeles, and was the judge who presided at the trial of said action number 71109 and the judge before whom the application for probation made by the defendants convicted in said action was set for hearing on June 7, 1938, and the judge before whom the matter of pronouncing judgment and sentencing said defendants was set to be heard on June 7, 1938, all of which was known to the respondents and each of them on and before said 5th day of May, 1938.

V

That the statements contained in said editorial and the publishing thereof in said Los Angeles Times as aforesaid were intended by the respondents and each of them and were in and of themselves calculated and had an inherent tendency to:

(1) Interfere with, influence, sway and control the proceedings in said action number 71109 and interfere with,

sway, control, embarrass and influence the actions and decisions of the judge who presided at the trial of said action and whose duty it was to rule upon the application for probation filed by the defendants in said action number 71109 and to pronounce judgment and sentence upon said defendants, and to interfere with, sway, control, embarrass, and influence the actions and decisions of said court in connection with rulings or orders to be made by it on any motions or other proceedings which might legally be made or taken or prosecuted subsequent to the publication of said editorial.

[fols. 30-31] (2) Interfere with the orderly and due administration of justice in said action.

J. Louis Elkins.

Subscribed and sworn to before me this 13 day of May, 1938. Charles E. Beardsley, Notary Public in and for the County of Los Angeles, State of California. (Seal.)

* * * * * * *

[fol. 32] EXHIBIT No. 2

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 428920

In the Matter of THE TIMES-MIRROR COMPANY, a Corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, Respondents, in Contempt.

ORDER TO SHOW CAUSE

Upon reading the affidavit of J. Louis Elkins this day filed herein, and good cause appearing therefrom for this order,

It Is Hereby Ordered that said The Times-Mirror Company, Harry Chandler, Norman Chandler and L. D. Hotchkiss, and each of them, do be, and appear before the above named Superior Court, in Department No. 1 thereof, at the hour of 10 o'clock A. M., on the 23rd day of June, 1938, then and there to show cause, if any there be, why they and

each of them should not be adjudged guilty of contempt of court and punished therefor by reason of the acts and each of the acts set forth in the affidavit of said J. Louis Elkins and alleged to have been committed by them and each of them, reference to said affidavit being hereby made for particulars of the acts charged.

And It Is Further Ordered that this Order to Show Cause and the affidavit of J. Louis Elkins on file herein hereinabove mentioned be served upon said The Times-Mirror Company, Harry Chandler, Norman Chandler, and L. D. [fol. 33] Hotchkiss, and each of them, on or before the 18th day of June, 1938, by delivering a copy of this Order to Show Cause and a copy of said affidavit to said The Times-Mirror Company, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, and each of them, personally.

Dated this 3rd day of June, 1938.

Ruben S. Schmidt, Judge of the Superior Court.

[fol. 34] EXHIBIT No. 3

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 428920

In the Matter of THE TIMES-MIRROR COMPANY, a Corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, Respondents.

DEMURRER

Come now the respondents, and each one thereof joining in the demurrer, and each of said respondents demurs to the Order to Show Cause and the affidavit of J. Louis Elkins on file herein, being the affidavit upon which said Order to Show Cause was issued, and for cause of demurrer alleges:

1. The facts stated in said affidavit do not constitute facts sufficient to authorize the issuance of an order requiring these respondents, or any of them, to show cause why they, or any of them, should not be adjudged guilty of contempt of court and punished therefor.

2. That the facts stated in said affidavit are insufficient to show that the printing, publishing and circulation of the

articles set forth in said affidavit constituted any unlawful interference with the process or proceedings of the above entitled court.

3. That the facts stated in said affidavit are insufficient to show that these respondents, or any of them, are guilty of a contempt of the above entitled court.

4. That the facts stated in said affidavit are insufficient to constitute a contempt of court.

[fol. 35] 5. That said affidavit does not show and the facts stated in said affidavit do not establish that the editorials, or any of them, published as stated in said affidavit were of such a character in their form and substance as to be calculated to or have an inherent tendency to constitute an unlawful interference with the process or proceedings of this court in any of the matters referred to in said affidavit.

6. Said affidavit upon which respondents were cited to show cause why they, and each of them, should not be adjudged guilty of contempt of court and punished therefor by reason of the acts and each of the acts set forth in the affidavit of J. Louis Elkins and alleged to have been committed by them, and each of them, is materially and fatally defective in failing to allege or state that these respondents, and each of them, personally caused or personally permitted the publication of the editorials and each of the editorials set forth in said affidavit.

7. There is a defect of title in said action in that the title should have been "The People of the State of California on the Accusation of J. Louis Elkins v. The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler and L. D. Hotchkiss."

8. The court is without jurisdiction to proceed because of the absence in said proceeding of the Attorney General of the State of California and/or the District Attorney of the County of Los Angeles and/or the failure of said Attorney General and/or said District Attorney to appear and prosecute said action.

Wherefore, respondents pray that the Order to Show Cause be dismissed, and for such other and further relief as the court may deem proper.

Cosgrove & O'Neil. By T. B. Cosgrove. By F. B. Yoakum, Jr., Attorneys for Respondents.

[fol. 36] EXHIBIT No. 4

"We desire to state for the record that we rely upon the Constitution of the United States and amendment 1, which provides that: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press,'——

"And amendment 14 providing that: 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any statement deprive any person of life, liberty, or property, without due process of law;——

"We are not unmindful that in Patterson against Colorado, decided in 1907, 205 U. S. 454, Mr. Justice Holmes in rendering the majority opinion stated that the court left undecided the question whether there is to be found in the Fourteenth Amendment a prohibition similar to that in the First, relating to freedom of speech and freedom of the press. The particular language appears at 462.

"The dissenting opinion of Justice Harlan, page 464, states that the Fourteenth Amendment prohibits the states from restricting the rights of free speech and of free press, and to the same extent that the First Amendment prohibits the United States, by restricting Congressional action. There are several recent decisions holding that the prohibition contained in the First Amendment against Congressional action impinging on freedom of speech and of the press, is also to be found in the Fourteenth Amendment preventing the states from impinging on such rights.

"Calling your attention first to the case of Gitlow v. New York, 268 U. S. 652, the particular language appearing at page 666, a case decided in 1925.

[fol. 37] "And there is a dissenting opinion of Justice Brandeis to the same effect in the case of Whitney v. California, 274 U. S. 357, at page 371, a case decided in 1927, there are the concurring opinions of both Justice Holmes and Justice Brandeis to the same effect.

"In the case of Fiske v. Kansas, case decided in 1927, reported in 274 U. S. at 380, at 382.

"And the case of Stromberg v. California, decided in 1931, and reported in 283, 359, the language appears at 368 and 369.

"In the 274th U. S., the language appears at 382.

"In the case of Ex-parte Near against Minnesota, decided in 1931, reported in 283 U. S. at 697, the decision, and the pages at which the particular language appears, if anyone is interested in it, are 707, 708 and 713 to 716.

"And the case entitled Grosjean against American Press Company, a case decided in 1936, reported in 297 U. S. at page 233, and the language appears at pages 243, 244, 246, 248, and at the bottom of 249, and also on the top of page 250.

"You will find the case entitled Lovell v. City of Griffin, a case decided in 1938, and it is reported in 58 Supreme Court Reports, at 666, and the particular language appears at page 669. I don't have the U. S. official report on that. It wasn't out at the time."

(Pages 94 to 96 of Transcript of Proceedings of July 6, 1938.)

[fol. 38] EXHIBIT NO. 5

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 428920

In the Matter of THE TIMES-MIRROR COMPANY, a Corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, Respondents

ANSWER OF RESPONDENT, THE TIMES-MIRROR COMPANY, A CORPORATION

Comes now the respondent, The Times-Mirror Company, a corporation, upon its own behalf, separating from the other respondents herein, and files this, its answer, to the order to Show Cause in the matter above entitled.

Answer to First Count

To the statements appearing in the First Count of the affidavit of J. Louis Elkins filed herein, respondent, The Times-Mirror Company, a corporation, admits, denies and alleges as follows:

I

Answering Paragraph I thereof, respondent admits the correctness of the statements therein contained.

II

Answering Paragraph II thereof, respondent admits that on and before the 21st day of December, 1937, there was pending in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "The People of the State of California vs. William Busick, et al.," Criminal No. 67121 in said court, in which said action the defendants and each of them were charged with a felony, [fol. 39] to wit, conspiracy to violate Sections 418 and 594 of the Penal Code of the State of California. Admits that on the 20th day of December, 1937, certain of the defendants in said action were found guilty as charged by the jury impaneled in said case, and on said 20th day of December, 1937, the judge who presided at the trial of said action set December 22nd, 1937, as the day and date for pronouncing judgment and sentencing the defendants so convicted.

Respondent further admits that on and before the 21st day of December, 1937, it knew that a number of persons whose names were unknown to the respondent and who had prior to said 21st day of December, 1937, been employed in the Douglas airplan plant at Santa Monica and who were said to have participated in a "sit-down" strike at said plant were being prosecuted in the courts of Los Angeles County by the District Attorney of Los Angeles County.

Respondent denies generally all of the statements of said Paragraph II not herein specifically admitted.

III

Answering Paragraph III thereof, respondent admits that on the 21st day of December, 1937, this respondent, The Times-Mirror Company, a corporation, caused to be printed and published and circulated in the City of Los Angeles, and elsewhere, an issue of the Los Angeles Times; and further admits that in said issue of said Los Angeles Times there was printed and published a certain editorial entitled "Sit-Strikers Convicted," which said editorial is in the words and figures as set forth in said Paragraph III.

Respondent denies generally all of the statements of Paragraph III not herein specifically admitted.

[fol. 40] Further answering said Paragraph III, this respondent alleges that the editorial entitled "Sit-Strikers Convicted," published in the Los Angeles Times under date of December 21, 1937, first came to the notice and attention

of the officers and directors of this respondent corporation subsequent to said publication and that prior thereto no officer or director of this respondent corporation had been consulted concerning said editorial and no officer or director of this respondent corporation knew anything concerning the preparation or the contents of said article and had no information that said article was being prepared for publication.

IV

Answering Paragraph IV thereof, respondent admits that said editorial and the statements contained therein referred to said action No. 67121 and to the defendants found guilty therein and to the verdict of the jury in said action rendered on the 20th day of December, 1937, and admits that said editorial and the statements contained therein were intended to be understood by persons reading said editorial to refer to said action numbered 67121 and to the defendants therein and to the verdict of the jury in said action.

Respondent denies generally all of the statements of Paragraph IV not herein specifically admitted.

V

Answering Paragraph V thereof, respondent denies generally and specifically each and every statement therein contained.

Answer to Third Count

To the statements appearing in the Third Count of the affidavit of J. Louis Elkins filed herein, respondent, The Times-Mirror Company admits, denies and alleges as follows:

[fol. 41] I

Answering Paragraph I thereof, respondent admits the correctness of the statements therein contained.

II

Answering Paragraph II thereof, respondent admits that on and before the 14th day of April, 1938, there was pending in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "The People of the State of California vs. Erwin P. Werner and Helen M. Werner," Criminal No. 69273 in said court, in

which said action the defendants and each of them were charged with a felony in two counts, to-wit, attempt at grand theft and violating Section 653 (f) of the Penal Code. Admits that on the 12th day of April, 1938, each of the defendants in said action was found guilty as charged on both counts by the jury impaneled in said case, and on said 12th day of April, 1938, the said defendants and each of them gave notice of motion for a new trial and the judge who presided at the trial of said action set April 22nd, 1938, as the day and date for passing on said motion for a new trial made on behalf of said defendants and each of them and as the day and date for pronouncing judgment and sentencing the defendants so convicted.

Respondent further admits that on and before the 14th day of April, 1938, it knew that there was pending in the Superior Court of the State of California, in and for the County of Los Angeles, a certain criminal action in which Erwin P. Werner and Helen M. Werner were defendants, and in which action said defendants were charged with a felony.

Respondent denies generally all of the statements of Paragraph II not herein specifically admitted.

[fol. 42] III

Answering Paragraph III thereof, respondent admits that on the 14th day of April, 1938, this respondent, The Times-Mirror Company, caused to be printed and published and circulated in the City of Los Angeles, and elsewhere, an issue of the Los Angeles Times; further admits that in said issue of said Los Angeles Times there was printed and published a certain editorial entitled "The Fall of an Ex-Queen," which said editorial is in the words and figures as set forth in said Paragraph III.

Respondent denies generally all of the statements of Paragraph III not herein specifically admitted.

Further answering said Paragraph III, this respondent alleges that the editorial entitled "The Fall of an Ex-Queen," published in the Los Angeles Times under date of April 14th, 1938, first came to the notice and attention of the officers and directors of this respondent corporation subsequent to said publication, and that prior thereto no officer or director of this respondent corporation had been consulted concerning said editorial and no officer or director

of this respondent corporation knew anything concerning the preparation or the contents of said article and had no information that said article was being prepared for publication.

IV

Answering Paragraph IV thereof, respondent admits that said editorial and the statements contained therein referred to said action numbered 69273 and to the defendant Helen M. Werner found guilty therein and to the verdict of the jury in said action rendered on the 12th day of April, 1938, as aforesaid, and said editorial and the statements contained therein were intended to be understood by persons reading said editorial to refer to said action numbered [fol. 43] 69273 and to the defendant Helen M. Werner therein and to the verdict of the jury in said action.

Respondent denies generally all of the statements of Paragraph IV not herein specifically admitted.

V

Answering Paragraph V thereof, respondent denies generally and specifically each and every statement therein contained.

Answer to Fifth Count

To the statements appearing in the Fifth Count of the affidavit of J. Louis Elkins filed herein, respondent, The Times-Mirror Company, admits, denies and alleges as follows:

I

Answering Paragraph I thereof, respondent admits the correctness of the statements therein contained.

II

Answering Paragraph II thereof, respondent admits that on and before the 5th day of May, 1938, there was pending in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "The People of the State of California vs. Matthew Shannon and Kennon Holmes," Criminal No. 71109 in said court, in

which action the defendants and each of them were charged with a felony, to wit, conspiracy to violate Section 245 of the California Penal Code and assault with a deadly weapon. Admits that on the 22nd day of April, 1938, said defendants in said action were found guilty as charged by the jury impaneled in said case and made application for probation and on the 2nd day of May, 1938, the judge who presided at the trial of said action set June 7th, 1938, as the day and date for passing upon the application of the defendants [fol. 44] in said action for probation and for pronouncing judgment and sentencing the defendants so convicted.

Respondent further admits that on and before the 5th day of May, 1938, it knew that certain persons whose names were unknown to this respondent had been arrested upon the charge of having assaulted non-union truck drivers and were being prosecuted in the courts of Los Angeles County by the District Attorney of Los Angeles County.

Respondent denies generally all of the statements of said Paragraph II not herein specifically admitted.

III

Answering Paragraph III thereof, respondent admits that on the 5th day of May, 1938, this respondent, The Times-Mirror Company, a corporation, caused to be printed and published and circulated in the City of Los Angeles, and elsewhere, an issue of the Los Angeles Times; further admits that in said issue of said Los Angeles Times there was printed and published a certain editorial entitled "Probation for Gorillas?" which said editorial is in the words and figures as set forth in said Paragraph III.

Respondent denies generally all of the statements of Paragraph III not herein specifically admitted.

Further answering said Paragraph III, this respondent alleges that the editorial entitled "Probation for Gorillas?", published in the Los Angeles Times under date of May 5th, 1938, first came to the notice and attention of the officers and directors of this respondent corporation subsequent to said publication and that prior thereto no officer or director of this respondent corporation had been consulted concerning said editorial and no officer or director of this respondent corporation knew anything concerning

the preparation or the contents of said article and had no information that said article was being prepared for publication.

[fol. 45] IV

Answering Paragraph IV thereof, respondent admits that said editorial and the statements contained therein referred to said action No. 71109 and to the defendants found guilty therein and to the application of said defendants for probation on the 7th day of June, 1938, and admits that said editorial and the statements contained therein were intended to be understood by persons reading said editorial to refer to said action No. 71109 and to the defendants found guilty therein and to the application of said defendants for probation on the 7th day of June, 1938; further admits that "Judge A. A. Scott" referred to in said editorial was at all times mentioned in said Paragraph IV a duly appointed, qualified and acting judge of the Superior Court of the State of California, in and for the County of Los Angeles, and was the judge who presided at the trial of said action No. 71109 and the judge before whom the application for probation made by the defendants convicted in said action was set for hearing on June 7th, 1938, and the judge before whom the matter of pronouncing judgment and sentencing said defendants was set to be heard on June 7th, 1938.

Respondent denies generally all of the statements of Paragraph IV not herein specifically admitted.

V

Answering Paragraph V thereof, respondent denies generally and specifically each and every statement therein contained.

Wherefore, respondent, having fully answered said Order to Show Cause, prays that the same be dismissed, and for such other and further relief as the court may deem proper.

Cosgrove & O'Neil, by T. B. Cosgrove, by F. B. Yoakum, Jr., Attorneys for Respondent, The Times-Mirror Company, a Corp.

[fols. 46-64] *Duly sworn to by H. E. Downing. Jurat omitted in printing.*

[fol. 65] EXHIBIT No. 8

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 428920

In the Matter of THE TIMES-MIRROR COMPANY, a Corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, Respondents

Answer of Respondent L. D. Hotchkiss

Comes now the respondent L. D. Hotchkiss, upon his own behalf, separating from the other respondents herein, and files this, his answer to the Order to Show Cause in the matter as above entitled.

Answer to First Count

To the statements appearing in the First Count of the affidavit of J. Louis Elkins filed herein, respondent L. D. Hotchkiss admits, denies and alleges as follows:

I

Answering Paragraph I thereof, respondent admits the correctness of the statements therein contained.

II

Answering Paragraph II thereof, respondent admits that on and before the 21st day of December, 1937, there was pending in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled "The People of the State of California vs. William Busick, et al.," Criminal No. 67121, in said court, in which said action the defendants and each of them were charged with a felony, to wit, conspiracy to violate Sections 418 and [fol. 66] 594 of the Penal Code of the State of California. Admits that on the 20th day of December, 1937, certain of the defendants in said action were found guilty as charged by the jury impaneled in said case, and on said 20th day of December, 1937, the judge who presided at the trial of said action set December 22nd, 1937, as the day and date for pronouncing judgment and sentencing the defendants so convicted.

Respondent further admits that on and before the 21st day of December, 1937, he knew that a number of persons whose names were unknown to the respondent and who had prior to said 21st day of December, 1937, been employed in the Douglas airplane plant at Santa Monica, California, and who were said to have participated in a "sit-down" strike at said plant, were being prosecuted in the courts of Los Angeles County by the District Attorney of Los Angeles County.

Respondent denies generally all of the statements of said Paragraph II not herein specifically admitted.

III

Answering Paragraph III thereof, respondent admits that on the 21st day of December, 1937, the respondent The Times-Mirror Company, a corporation, caused to be printed and published and circulated in the City of Los Angeles, and elsewhere, an issue of the Los Angeles Times; further admits that in said issue of said Los Angeles Times there was printed and published a certain editorial entitled "Sit-Strikers Convicted," which said editorial is in the words and figures as set forth in said Paragraph III.

Respondent denies generally all of the statements of Paragraph III not herein specifically admitted.

[fol. 67]

IV

Answering Paragraph IV thereof, respondent admits that said editorial and the statements contained therein referred to said action No. 67121 and to the defendants found guilty therein and to the verdict of the jury in said action rendered on the 29th day of December, 1937, and admits that said editorial and the statements contained therein were intended to be understood by persons reading said editorial to refer to said action No. 67121 and to the defendants therein and to the verdict of the jury in said action.

Respondent denies generally all of the statements of Paragraph IV not herein specifically admitted.

V

Answering Paragraph V thereof, respondent denies generally and specifically each and every statement therein contained.

Answer to Third Count

To the statements appearing in the Third Count of the affidavit of J. Louis Elkins filed herein, respondent L. D. Hotchkiss admits, denies and alleges as follows:

I

Answering Paragraph I thereof, respondent admits the correctness of the statements therein contained.

II

Answering Paragraph II thereof, respondent admits that on and before the 14th day of April, 1938, there was pending in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action, entitled "The People of the State of California vs. Erwin P. Werner [fol. 68] and Helen M. Werner," Criminal No. 69273, in said court, in which said action the defendants and each of them were charged with a felony in two counts, to wit, attempt at grand theft and violating Section 653 (f) of the Penal Code. Admits that on the 12th day of April, 1938, each of the defendants in said action was found guilty, as charged, on both counts by the jury impaneled in said case, and on said 12th day of April, 1938, the said defendants and each of them gave notice of motion for a new trial, and the judge who presided at the trial of said action set April 22, 1938, as the day and date for passing on said motion for a new trial made on behalf of said defendants and each of them, and as the day and date for pronouncing judgment and sentencing the defendants so convicted.

Respondent further admits that on and before the 14th day of April, 1938, he knew that there was pending in the Superior Court of the State of California, in and for the County of Los Angeles, a certain criminal action in which Erwin P. Werner and Helen M. Werner were defendants, and in which action said defendants were charged with a felony.

Respondent denies generally all of the statements of Paragraph II not herein specifically admitted.

III

Answering Paragraph III thereof, respondent admits that on the 14th day of April, 1938, the respondent The

Times-Mirror Company caused to be printed and published and circulated in the City of Los Angeles, and elsewhere, an issue of the Los Angeles Times; further admits that in said issue of said Los Angeles Times there was printed and published a certain editorial entitled, "The Fall of an Ex-Queen," which said editorial is in the words and figures as set forth in said Paragraph III.

[fol. 69] Respondent denies generally all of the statements of Paragraph III not herein specifically admitted.

Further answering said Paragraph III, this respondent alleges that the editorial entitled, "The Fall of an Ex-Queen," published in the Los Angeles Times under date of April 14, 1938, first came to his notice and attention subsequent to said publication, and that prior thereto this respondent had not been consulted concerning said editorial, knew nothing of its preparation or the contents of the article, and had no information that said article was being prepared for publication.

IV

Answering Paragraph IV thereof, respondent admits that said editorial and the statements contained therein referred to said action numbered 69273 and to the defendant Helen M. Werner, found guilty therein, and to the verdict of the jury in said action returned on the 12th day of April, 1938, as aforesaid, and said editorial and the statements contained therein were intended to be understood by persons reading said editorial to refer to said action numbered 69273 and the defendant Helen M. Werner therein and to the verdict of the jury in said action.

Respondent denies generally all of the statements of Paragraph IV not herein specifically admitted.

V

Answering Paragraph V thereof, respondent denies generally and specifically each and every statement therein contained.

Answer to Fifth Count

To the statements appearing in the Fifth Count of the affidavit of J. Louis Elkins filed herein, respondent L. D. Hotchkiss admits, denies and alleges as follows:

[fol. 70] I

Answering Paragraph I thereof, respondent admits the correctness of the statement therein contained.

II

Answering Paragraph II thereof, respondent admits that on and before the 5th day of May, 1938, there was pending in the Superior Court of the State of California, in and for the County of Los Angeles, a certain action entitled, "People of the State of California vs. Matthew Shannon and Kennon Holmes," Criminal No. 71109, in said court, in which action the defendants and each of them were charged with a felony, to wit, conspiracy to violate Section 245, California Penal Code, and assault with a deadly weapon. Admits that on the 22nd day of April, 1938, said defendants in said action were found guilty as charged by the jury impaneled in said case and made application for probation, and on the 2nd day of May, 1938, the judge who presided at the trial of said action set June 7, 1938, as the day and date for passing upon the application of the defendants in said action for probation, and for pronouncing judgment and sentencing the defendants so convicted.

Respondent further admits that on and before the 5th day of May, 1938, he knew that certain persons whose names were unknown to the respondent had been arrested upon the charge of having assaulted non-union truck drivers and were being prosecuted in the courts of Los Angeles County by the District Attorney of Los Angeles County.

Respondent denies generally all of the statements of said Paragraph II not herein specifically admitted.

[fol. 71] III

Answering Paragraph III thereof, respondent admits that on the 5th day of May, 1938, the respondent The Times-Mirror Company, a corporation, caused to be printed and published and circulated in the City of Los Angeles, and elsewhere, an issue of the Los Angeles Times; further admits that in said issue of said Los Angeles Times there was printed and published a certain editorial entitled, "Probation for Gorillas?", which said editorial is in the words and figures as set forth in said Paragraph III.

Respondent denies generally all of the statements of Paragraph III not herein specifically admitted.

Further answering said Paragraph III, this respondent alleges that the editorial entitled, "Probation for Gorillas?", published in the Los Angeles Times under date of May 5, 1938, first came to his notice and attention subsequent to said publication, and that prior thereto this respondent had not been consulted concerning said editorial, knew nothing of the preparation or the contents of the article and had no information that said article was being prepared for publication.

IV

Answering Paragraph IV thereof, respondent admits that said editorial and the statements contained therein referred to said action No. 71109 and to the defendants found guilty therein and to the application of said defendants for probation on the 7th day of June, 1938, and admits that said editorial and the statements contained therein were intended to be understood by persons reading said editorial to refer to said action No. 71109 and to the defendants found guilty therein and to the application of said defendants for probation on the 7th day of June, 1938. Further admits that [fol. 72] "Judge A. A. Scott", referred to in said editorial, was at all times mentioned in said Paragraph IV a duly appointed, qualified and acting judge of the Superior Court of the State of California, in and for the County of Los Angeles, and was the judge who presided at the trial of said action No. 71109, and the judge before whom the application for probation, made by the defendants convicted in said action, was set for hearing on June 7, 1938, and the judge before whom the matter of pronouncing judgment and sentencing said defendants was set to be heard on June 7, 1938.

Respondent denies generally all of the statements of Paragraph IV not herein specifically admitted.

V

Answering Paragraph V thereof, respondent denies generally and specifically each and every statement therein contained.

Wherefore, respondent having fully answered said Order to Show Cause, prays that the same be dismissed, and for such other and further relief as the court may deem proper.

Cosgrove & O'Neil, by T. B. Cosgrove, by F. B. Yoakum, Jr., Attorneys for Respondent, L. D. Hotchkis.

[fol. 73] *Duly sworn to by L. D. Hotchkiss. Jurat omitted in printing.*

[fol. 74] EXHIBIT No. 9

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 428920

In the Matter of THE TIMES-MIRROR COMPANY, a Corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, Respondents

AFFIDAVIT UPON ORDER TO SHOW CAUSE

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Harry Chandler, being first duly sworn, deposes and says:

I am one of the respondents named in the Order to Show Cause in the matter as above entitled and make this affidavit upon behalf of myself and each of the other respondents named.

I am a resident of the City of Los Angeles, County of Los Angeles, State of California, of the age of seventy-four years, and during the past approximately fifty-three years have been connected continuously with the circulation and publication of the Los Angeles Times. During this period I have been engaged in various capacities, from carrying the Los Angeles Times on newspaper routes to the position which I now occupy as President of The Times-Mirror Company, a corporation, the publisher of the said Los Angeles Times. With the editorial policy of the Los Angeles Times I have been intimately familiar and have contributed greatly to the shaping of said policies during the past approximately thirty years.

[fol. 75] For approximately fifty years the Los Angeles Times has been the principal newspaper exponent in the United States of the open shop system of industrial relations.

The open shop system advocated by the Los Angeles Times may be defined as that industrial policy which demands and upholds an equality of rights for employers and employees, individually and collectively, and the equal protection of their liberties and interests. It declares it to be the right and privilege of every wage-earner to join or not to join a labor organization, as he may personally choose, without coercion from any source nor penalty for his choice. It upholds his right to work as he individually sees fit, for whom, for what wages and under what conditions. It upholds his right to earn as much as his individual capabilities make possible and to keep all he earns, without arbitrary or involuntary deductions for the support of a labor organization with whose purposes he is not in sympathy. It upholds the right of workers in groups to organize, to bargain collectively for their own benefit, to strike against unsatisfactory wages or working conditions and otherwise to act jointly for the protection and advancement of their own interests, provided that such activities are lawful, noncoercive and include no trespass upon the rights of others.

The open shop policy declares and upholds the right of employers to employ and to discharge workers on the basis of individual merit and capability without regard to whether they are or are not members of a labor organization. It upholds the right of an employer to conduct his business as he sees fit, without dictation or coercion from any source, provided that such conduct is lawful and that wage and [fol. 76] working conditions are as favorable to employees as the condition of the business may permit. It upholds his right to operate on an economic basis and with continuity of production, free from unfair or unreasonable interruption and interference.

The open shop policy denies the right of either employers or employees to serve or seek to serve their personal ends by coercive or unlawful means. It opposes oppressive combinations of capital equally with oppressive combinations of labor. It endorses and supports the fair and orderly adjudication and arbitration of labor disputes from whatever source invoked.

In pursuance of and support of this policy, The Times has long and consistently defended freedom in industry for employers and employees alike and has opposed the efforts of any to destroy or to curtail that freedom. It has resisted to the extent of its ability and, on occasion, at great cost to itself in the lives of employees and in property damage, attempts to establish within its sphere of influence conditions inimical to that policy. It has done everything in its power to establish and to maintain the open shop principle as the industrial principle of Los Angeles and Southern California. It believes and has frequently declared that the unprecedented growth and development of this community in population and industries has been in large part due to that policy, one which has rendered it relatively exempt from frequent and destructive labor wars and which has advertised it throughout the country as a community desirable alike to industry and to wage-earners.

By virtue of its deep convictions on the subject and the many hundreds of editorial expressions thereof which it has published over the past half-century, The Times has become thoroughly identified in the public mind with the open shop policy. The vigor and determination of its sup- [fol. 77] port of this system of industrial relations and of its opposition to everything hostile thereto have made it a leader of community thought and action in matters wherein the welfare of such relations is involved. To a very large extent, the duty and responsibility of maintaining and defending, through the medium of informed public opinion, the principle of industrial freedom against the many attacks which have been and are being made upon it have devolved upon The Times. That duty and responsibility it has welcomed. To my knowledge and belief it has never failed to fulfill them to the best of its ability and at no matter what sacrifice to itself. For the Los Angeles Times to fail outspokenly to support this principle or by silence to condone attacks upon it would be to contradict and disavow a policy ingrained in and integral to itself and to the community for which it is privileged and expected to speak.

The occasions on which The Times has been thus called upon to support and defend the open shop and to denounce its enemies have been many. Over the years numerous well-organized, well-planned and well-financed efforts have been made to dislodge the open shop system in the industries of this community and to substitute for it the closed shop, a

system which is in all essential respects its opposite. Many if not most of these efforts have been accompanied by sabotage, violence, terrorism and other unlawful activities on the part of such closed-shop proponents, activities ranging from the dynamiting of open shop establishments, with accompanying loss of life, to intimidation of and felonious assaults upon non-union wage-earners. These activities [fol. 78] have been factually reported in the news columns of The Times and their illegal, destructive and peace-disturbing character editorially pointed out and commented upon. In these editorials The Times has consistently advocated and upheld the rule of law and order, applauded those who have endeavored to maintain it and has denounced and demanded appropriate punishment for those who would break it down.

Within the past two years a new offensive weapon has been adopted by advocates of the complete unionization of industry, essential principle of the closed shop. This is the illegal seizure and occupation of property by so-called sit-down strikes. The first instance of this of which The Times has record occurred on or about November 29, 1936, when 1200 employees of the Midland Steel Company, Detroit, dropped their tools and stopped their machines but continued to occupy their working quarters, refusing to vacate pending the outcome of negotiations between their union, the United Automobile Workers, and company officials. Members of the same union started a sit-down strike in the Detroit plants of the Kelsey-Hayes Company on December 23, 1936, and on December 28th they halted by similar means operations in the Fisher Body Company plant of General Motors Corporation at Cleveland. Out of this grew the 42-day General Motors strike, the first important one of the sit-down variety in the United States. It caused a practically complete suspension of the company's operations in Cleveland, Detroit, Flint, Michigan, and elsewhere, and the unemployment of more than 100,000 men. The strikers refused to obey repeated court orders to vacate the property illegally seized. Rioting at Flint between strikers and the police and members of the National Guard resulted in injuries [fol. 79] to a police officer and two pickets. The strike ended on February 11, 1937, when an agreement was reached between company officials and those of the union.

On March 8, 1937, members of the United Automobile Workers launched a sit-down strike in the eight Detroit

plants of the Chrysler Corporation. On March 19th the Sheriff of Wayne County, in which Detroit is located, sought to arrest some six thousand of the strikers for illegal possession of property but was prevented by action of Governor Frank Murphy. On March 24th, the plants were evacuated by order of John L. Lewis, head of the Committee for Industrial Organization, with which the United Automobile Workers are affiliated. The strike ended April 6th by agreement between Lewis and Walter Chrysler. This strike lasted thirty days, during which time 60,000 men were unemployed as a result. On the following day sit-down strikes in the Reo and Hudson plants were similarly ended by agreement.

Other sit-down strikes in progress during February were the Briggs Manufacturing Co., Detroit; Detrola Radio plant, Detroit; Fry Products Company, Detroit; H. & H. Tube Co., and the Yale & Towne Lock Co.; Wood Manufacturing Co., Detroit; Arvey Corporation, Detroit; Star Transfer Co., Detroit and Timken Detroit Axle Co., Detroit; Electric Boat Company, Groton, Connecticut; Crowell Publishing Co., pressmen, Springfield, O[illegible], and Fansteel Metallurgical Corp., Springfield, Illinois.

On February 23, 1937, approximately 400 members of the United Automobile Workers started a sit-down strike in the Santa Monica plant of the Douglas Aircraft Company, Inc., as part of an effort to "organize" the several thousand [fol. 80] employees of the company as part of the U. A. W., though members of this organization, a Committee for Industrial Organization affiliate, comprised only a comparatively small minority of the plant's total worker personnel. The strikers were warned that the company was engaged on contracts for the United States government but they refused to evacuate. On February 25th Los Angeles County Sheriff's officers, armed with warrants predicated on grand jury indictments charging the strikers with criminal conspiracy, broke into the plant and arrested 394 sit-downers. At about the same time some one hundred members of the same organization attempted similarly to seize the plant of the Northrop Corporation, a Douglas affiliate, by a sit-down strike. A representative of the District Attorney's office gave them an hour to evacuate or face grand jury action. They evacuated.

On or about February 25, 1937, Homer Martin, president of the United Automobile Workers, was quoted in press

dispatches from New York as having said in connection with the Douglas strike:

"Anti-labor tactics are not conducive to the building of good, safe planes. I'd hate awful bad to lose a wing because some worker thought he was getting a bad deal from his employer. If Douglas expects people to ride in his planes with any real sense of safety he must be sure of the good will of his employees."

On March 11th the Douglas strikers voted to return to work after Donald Douglas, president of the company, had agreed to reinstate 297 of them. On May 11th, the cases of all but twenty-four of the sit-strikers arrested at Santa Monica were dismissed by Superior Judge Bishop. Two other cases were later dismissed. In the first trial of the [fol. 81] remainder, ending July 2nd, the jury disagreed. The second trial began October 14, 1937, in the local Superior Court. On December 20th the jury found the twenty-two guilty of felonious conspiracy forcibly to enter and detain the Douglas plant and of committing malicious mischief. On December 29th William Busick and Andrew Schmolder, C. I. O. organizers and ringleaders of the strike, were fined $600.00 each with the alternative of two hundred days in jail. Eight members of the strike committee were fined $300.00 each with the alternative of 100-day jail sentences. The twelve others got $150.00 fines apiece or fifty days in jail.

Following the Douglas case convictions, sit-down strikes became infrequent and unpopular. They were generally condemned by the courts, by public officials and even by some labor leaders. Secretary of Labor Perkins, originally inclined to defend them, later admitted their illegality. The Third United States Court of Appeals held illegal a sit-down strike in the Apex Hosiery Company plant at Philadelphia and the United States Supreme Court declined to review the case.

Throughout the period of sit-down strikes The Times commented on them frequently and vigorously, taking the position that such efforts constituted illegal trespass upon and seizure for ransom of private property, to be treated as such. It applauded the action of authorities here and elsewhere so to deal with them and declared in an editorial published December 21, 1937, on the convictions in the Doug-

las case, that Los Angeles is to be congratulated on the possession of law enforcement officers, courts and juries able and determined to do their duty.

[fol. 82] In the course of this editorial, which is one of those complained of as having been in contempt of court, The Times referred to the verdict as notice that Los Angeles is aroused to the danger of "davebeckism" and that no form of labor terrorism will be tolerated here. It said further that the convictions might have a good deal to do with sending Dave Beck back to Seattle.

Dave Beck is international representative of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, commonly known as the Teamsters Union and now largely composed of drivers of trucks and other motor vehicles used for commercial purposes. His union jurisdiction comprises the eleven western States and western Canada His headquarters are in Seattle. Due to his extensive political and industrial influence, he has been frequently referred to as the "labor boss of Seattle." He acquired his present title in 1926 and his present jurisdiction in 1936.

Beck collaborated with the American Newspaper Guild in the strike which suspended publication of the Seattle Post-Intelligencer from August 14 to November 26, 1936, members of the Teamsters' Union acting as pickets and otherwise making it impracticable for the newspaper, Seattle's oldest daily, to publish.

Through his control of motor transportation and by reason of the sympathy and support of the late John F. Dore, until recently mayor of Seattle, Beck has become virtual political and industrial dictator of the Puget Sound territory. He has been able to close wholesale supply houses, shut down the lumber industry, close public highways to farmers, halt the import of raw materials and merchandise to manufacturers and merchants and stop deliveries to cus-[fol. 83] tomers. He has forced service industries to organize under his auspices and to pay a set percentage of their receipts to "administrators" named by him. This tribute ranges from three per cent for laundries, cleaners and dyers to $5.00 for every new automobile sold, with varying imposts on milk, bread and other foods, fuel and other household necessities. Some of the methods by which this situation has been brought about are described as follows in a series of articles by George W. Lynn and pub-

lished beginning March 11, 1938, in the Los Angeles Evening Herald and Express under the title "Seattle's Struggle: The Rise and Fall of Government of Violence":

"Seattle's story is typical of the entire northwest situation. It is a story of terrorism, destruction, wanton attacks and bewilderment to hundreds of thousands of people within the borders of this city and the State of Washington—all in the name of labor. * * * These plug-uglies, these gangsters and these beef squads have kept Seattle in terrorism for years. They have beaten up innocent citizens, overturned trucks, bombed places of business, thrown acid on materials and defied the law. They have destroyed confidence, they have destroyed business and they have made a mockery of law and order."

From Seattle and San Francisco, where the Teamsters' Union is similarly powerful, Beck endeavored early this year to extend his domination to the industrial area surrounding Portland, Oregon, by methods like those employed in Seattle. In Oregon these methods were strongly opposed to Governor Martin and the Portland authorities, with the result that to date approximately one hundred union members, including several of Beck's lieutenants, have been indicted, arrested, jailed or all three. Many of these have confessed or pleaded guilty in court to criminal acts ranging from assault and truck wrecking to arson and bombings. In connection with one of the latter, the Portland Oregonian said editorially:

[fol. 84] "It is clear from the confessions that a union official hired the Salem box factory (an open shop establishment) arsonists, that he obtained them through the agency of a union Teamsters' hiring hall and that they were paid $105 for setting a $60,000 fire."

Beck and his representatives have frequently threatened and endeavored to bring the Los Angeles industrial area under the control of the Teamsters' Union. On February 7, 1937, for example, Mayor Dore said at a public meeting in Los Angeles:

"The Seattle Teamsters' political party has made my city nearly 100 per cent union—the same as Los Angeles will be in the next couple of years."

Subsequent to this and other similar threats against the industrial liberty of this community, the Los Angeles Times published a series of brief, front-page articles under the continuing title "Progress in the Northwest." Each of these articles described some phase of the business and industrial situation in the Beck-dominated area of the northwest and the manner in which individual enterprises and industries have suffered by reason of such domination. These articles, beginning October 22 and concluding December 31, 1937, were published for the purpose of informing Times readers of what might be expected should the threat of "davebeckism" become a reality in this area.

In pursuance of that threat, the Teamsters' Union has made numerous efforts to organize and control the motor transportation industry of Los Angeles and its environs and various industries dependent upon motor transport. Among the latter are the baking and bread industry, the production and distribution of milk and other farm and dairy products, the distribution of beer and other enterprises involving the extensive employment of trucks and [fol. 85] truck drivers. In numerous instances these activities have been accompanied by sabotage, assaults and other violence to open shop property and non-union wage-earners. In December, 1937, at the peak of the Christmas shopping period, the union undertook by threats, violence and extensive picketing to organize the delivery systems of Los Angeles down town stores and to prevent the delivery of purchased merchandise to Los Angeles residences. On December 13 the May Company, one of the stores involved, applied to the Superior Court for an injunction against such activities. After a hearing featured by evidence of harassment, coercion, intimidation, assaults and other violence upon non-union store employees, Judge Kincaid on December 28 granted a permanent injunction restraining the Teamsters' Union and affiliates from such practices.

The local courts have taken judicial notice of the activities of the Teamsters' Union in other instances. On February 23, 1938, in the United States District Court sitting at Los Angeles an injunction was granted restraining the union from interfering with the peaceful relationship existing between the Brewery Workers' Union and California brewers, this case arising in connection with the effort of the Teamsters' Union to acquire control of the beer-

trucking industry as mentioned above. In his address to the court, summarizing the case for the Brewery Workers' Union which he represented, Saul S. Klein, veteran union labor attorney, said:

"The Teamsters' Union wants control of every driver on all highways so it can control the country's distribution system. * * * Dave Beck is not interested in labor. He's only interested in dues and assessments. * * * He is not only an enemy to labor but an enemy to society. It would be outrageous to have a man like this be a dictator of American labor."

[fol. 86] In handing down his decision, the Federal Court Judge announced from the bench:

"I feel that injunctive relief must be allowed to preserve the right of the brewers to continue their business and to insure them that so long as they deal with their actual workers on matters pertaining to their employment, they may be relieved from attacks such as are alleged and are shown to have been made by the Brotherhood of Teamsters."

On April 22, 1938, following an investigation of terroristic activities, the Los Angeles County grand jury returned felony indictments charging assault, extortion and conspiracy against eleven members of the Los Angeles unit of the Teamsters' Union, including its president, Dexter L. Lewis, Harry W. Dail, general organizer for the International Teamsters' Union and known as Beck's local representative, Thomas L. Pitts, secretary-treasurer of the Grocery Drivers' affiliate of the union, and eight others. The indictments listed a series of assaults, beatings, strike threats against trucking operators and extortion of money under threat of strike. In a statement issued after the return of the indictments, District Attorney Fitts said he expected further revelations of labor terrorism as a result of the grand jury's action.

On the same day, April 22, 1938, Matthew Shannon and Keenan Holmes, two members of the Teamsters' Union, were convicted by a jury in the local Superior Courts of felonious assault upon non-union truck drivers employed

by a downtown Los Angeles store involved in the Christmas-season organizing effort of the union hereinbefore described. The evidence disclosed several instances in which the defendants, described as "goon squad" members, fired steel ball-bearings from sling-shots at truck drivers and guards, injuring one of the former and causing an accident to a truck in which a guard was hurt.

[fol. 87] After their conviction on two counts of assault with a deadly weapon and one of conspiracy, Shannon and Holmes made application for probation. On May 5, The Times published an editorial vigorously opposing the granting of probation. In this editorial it said in effect that, in the interests of society and of community safety, men who commit such acts of terrorism, particularly when for pay, should be severely punished.

In the publication of this editorial The Times acted upon its knowledge of the fact that it is and long has been an established practice in probation matters for those in charge thereof to invite informed opinion on the question of whether or not probation should be granted. The Times is aware of the custom of probation officers to send out numerous requests for expressions of such opinion from those believed to be qualified by observation and otherwise to give it. In one recent probation case The Times was advised by a former presiding Los Angeles Superior Court judge that a criticism of probation, published subsequent to its granting, should have been made known while the matter was pending instead of afterward.

By reason of its many years of study and observation of labor controversies and of criminal activities which have frequently characterized them, The Times believes itself to be qualified to give an informed opinion on matters such as that involved in the probation matter above mentioned. It was in that belief and in an effort disinterestedly to serve what it conceives to be the best interests of this community that the editorial in question was prepared and published.

Further affiant sayeth not.

Harry Chandler.

Subscribed and sworn to before me this 28th day of June, 1938. C. O. Denning, Notary Public in and for the County of Los Angeles, State of California. (Notarial Seal.)

[fol. 88] EXHIBIT No. 10

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 428920

In the Matter of THE TIMES-MIRROR COMPANY, a Corporation, HARRY CHANDLER, NORMAN CHANDLER, and L. D. HOTCHKISS, Respondents

AFFIDAVIT UPON ORDER TO SHOW CAUSE

STATE OF CALIFORNIA,
County of Los Angeles, ss:

F. B. Yoakum, Jr., being first duly sworn, deposes and says:

That he is one of the attorneys of record for respondents in the matter as above entitled, and makes this affidavit on behalf of said respondents and each one thereof.

That it is the practice of the court as above entitled after a defendant in a criminal action has pleaded guilty or on trial has been found guilty and who applies for probation, to permit or deny such request In the event defendant is permitted by the court to file an application for probation, an application in writing upon a form provided by the court is filled out and filed with the Probation Department. Attached hereto, marked "Exhibit A," is a copy of such form of application for probation. That following the filing of such application for probation, filled out and executed by the applicant, the Probation Department then investigates the prior history, family traits, past environment and other allied subjects concerning the defendant. As a regular part of its investigation the Probation Department [fol. 89] sends letters to the persons whom the defendant has given as references. In such letters request is made that the person to whom the letter is sent inform the Probation Department as to the conduct, habits and tendencies of the defendant. That attached hereto, marked "Exhibit B," is a copy of said form of letter.

All responses to such letters are incorporated into and made a part of the report to the court of the probation officer. In the event that letters are received by the probation officer dealing with the application for probation, other

than replies to letters sent out by the probation officer, such voluntary letters are also incorporated in and made a part of the probation officer's report. Such voluntary letters are occasionally received. These voluntary letters sometimes take the form of petitions requesting favorable action by the Probation Department, but occasionally petitions are received by the Department stating that the application should be denied. The number of petitions favoring the denial of the application are far less numerous than those requesting favorable action.

Attached hereto, marked "Exhibit C," is a pamphlet composed by Carl L. May, formerly, if not presently, Chief Probation Officer in charge of adult probation in Los Angeles County. Said pamphlet is published and issued under authority of the Probation Department of said County.

Affiant has made an examination of the court files in certain criminal cases heretofore tried and pending in the court as above entitled and has examined the probation officer's report in such cases where applications were made for probation and has observed in said reports letters of the character hereinbefore in this affidavit referred to and has observed in at least one instance in said files a letter re- [fol. 90] specting the penalty to be imposed, directed to the judge before whom application for probation was pending by the office of the District Attorney of the county above entitled.

In the year 1933 a book entitled "Adult Probation," written by Mr. Justin Miller, was published by the Adult Probation Proceedings Publication Committee of Los Angeles, California. At page 7, column 2, of this publication it is stated that when an application for probation is received, the Department requests a report from the Police Department covering the facts of the case and that a form letter is sent to the references furnished by the defendant requesting various information. Among other matters of information requested, being one entitled "Recommendations." At page 11, column 1, of said publication appears the statement that the primary purpose of the investigation is for the information of the court. In column 2, page 11, it is stated that it is the practice to send letters to the references given by the defendant and that it is good practice to notify the proper police departments, mercantile associations, welfare associations and all kindred organiza-

tions, requesting them to furnish such information as they have to the Department and giving them an opportunity to present any facts that they may have. At page 13, column 1, it is stated that in a certain corporate securities case (the name of the same not being mentioned) the Probation Department received petitions and letters containing the signatures of approximately three hundred to four hundred persons, both for and against the defendant. At page 20, column 2, it is stated that the probation officer should advise the judge as to the agencies which he has con- [fol. 91] tacted, and when making his report should make it intensely realistic. At page 24 is the statement attributed to the Presiding Judge Ruben S. Schmidt in the court as above entitled, setting forth matters which should be contained in the report of the probation officer. Among other things, Judge Ruben Schmidt is quoted as stating that the report should reflect the identity of the sponsors of the applicant for probation. At page 30, column 1, of said publication it is stated that one matter which is very important to be contained in the report is the probation officer's opinion of the defendant's future possibilities, and under this heading should be told exactly what the probation officer thinks of defendant and what defendant's friends and employers think of him.

Further affiant sayeth not.

F. B. Yoakum, Jr.

Subscribed and sworn to before me this 24th day of June, 1938. Annabel Smith, Notary Public in and for the County of Los Angeles, State of California. (Notarial Seal.)

(Here follow 2 photolithographs, side folios 91a-91b)

EXHIBIT "A" TO AFFIDAVIT

APPLICATION FOR PROBATION

(Fill in all questions fully and carefully)

Dept.....

Case No.....

File No.....

Jail Booking No.....

Name..... Charge Convicted of..... Original Charge.....

Address..... Date of Probation Sentence..... On Bond.....

Plea..... Verdict..... User of Narcotics..... Intoxicants.....

Date of Birth..... Age..... Birthplace..... Race.....

Age started to work..... Education..... Occupation.....

Married..... Single..... Separated..... Divorced.....

Date Came to U. S..... to California..... to L. A. Co..... Citizen U. S.....

Wife's Maiden Name..... Address.....

Children's Names	Age	Address

Complaining Witness..... Address.....

Arresting Officer..... Where Arrested..... Date.....

Previous Arrests: Give charges, dates, places

Where Last Employed? How Long?

When Terminated and Why

Physical Condition..... Mental Condition.....

Mother's Maiden Name..... Address..... Nativity.....

Father's Name..... Address..... Nativity.....

Parents Separated..... Divorced..... Remarried..... Dead.....

Name and Address of Next Nearest Relative

REFERENCES: State completely

Give one Reference during School Period: Reference

Address

Date Came to U. S. ..... to California ..... to L. A. Co. ..... Citizen U. S. .....

Wife's Maiden Name ..... Address .....

Children's Names	Age	Address

Complaining Witness ..... Address .....

Arresting Officer ..... Where Arrested ..... Date .....

Previous Arrests: Give charges, dates, places

Where Last Employed? ..... How Long?

When Terminated and Why .....

Physical Condition ..... Mental Condition .....

Mother's Maiden Name ..... Address ..... Nativity .....

Father's Name ..... Address ..... Nativity .....

Parents Separated ..... Divorced ..... Remarried ..... Dead .....

Name and Address of Next Nearest Relative .....

REFERENCES: **State completely**

Give one Reference during School Period: Reference ..... Address .....

Give one Reference after leaving School: Reference ..... Address .....

Give Four References during last five years: Reference ..... Address ..... Reference ..... Address ..... Reference ..... Address ..... Reference ..... Address .....

Dated 193

Signed .....

Applicant .....

(Employment Record must be written on back.)

91-A

COMPLETE EMPLOYMENT RECORD

DATE	TO	NAME OF FIRM OR EMPLOYER	ADDRESS	NATURE OF WORK	REASON FOR LEAVING

I CERTIFY THAT THE ABOVE IS A TRUE RECORD OF ALL JOBS HELD BY ME SINCE I LEFT SCHOOL

APPLICANT

Superior Court
Case No.

Defendant's Name

Investigating Officer

Attorney

Address

Address

Divisional Director

Telephone

Deputy Probation Officer

Dept. No.

Prob. File No.

Date of Probation Sentence

The original and copy of the Application for Probation duly signed by the applicant should be filed with the Probation Department, 803 Law Bldg., Los Angeles, on the same day that permission is granted. The transcript of the preliminary hearing should accompany the application.

91-B

EXHIBIT "C" TO AFFIDAVIT

ADULTS ON PROBATION

WICKERSHAM REPORT RECOMMENDS PROBATION

It is the opinion of many people that through the Probation law many undeserving offenders are being constantly released. This statement is in error and is not supported by Court records. The Wickersham report, recently published by the United States Government, Washington, D.C., entitled, "PENAL INSTITUTIONS ? PROBATION AND PAROLE ?" proves this conception to be erroneous and emphasizes the good results of probation as now practiced. This report states, "PROBATION AS IT IS APPLIED TO THE ADULT OFFENDER IS THE MOST HOPEFUL ASPECT IN THE WHOLE FIELD OF CRIMINOLOGY "

UNEMPLOYMENT AND PROBATION

Due to the present disturbed economic conditions, unemployment is general. The curtailment of budgets and the reduction in payrolls has had a very serious anti- social effect upon a group who under normal condition would not violate our laws. The breakdown due to unemployment is the basic cause of many of the domestic problems and is often the cause of a physical and moral collapse which would not occur if steady and gainful employment were provided.

THE PROBATION OFFICER'S RESPONSIBILITY TO THE PUBLIC

County and State through the use of probation is obvious.

VICTIMS REIMBURSED

Thousands of dollars are reimbursed annually as a part of the probation orders to those who have been defrauded by probationers. Most probation officers are requesting in many cases that a fine be imposed as a condition of probation. These fines which are collected in installments during the term of probation often more than offset the total cost of probation.

PROBATION WITH INCARCERATION

A large percentage of those placed on probation must serve a County jail or Road Camp sentence of from one month to two years as part of their probation. When these men are released society is duty-bound to give them an opportunity to rehabilitate themselves by assisting them to find employment and a proper environment.

PROBATION RESTORES GOOD CITIZENSHIP

The beneficial results of probation must be broadcast if the tax-payers are to obtain the proper conception of this important field of social service It cannot be expected that people will laud probation if we fail to place in their hands the necessary facts which reveal that probation wisely and judiciously granted is instrumental in restoring many to good citizenship. An appeal should be made to churches, fraternal organizations, service clubs etc. to aid in this rehabilitation by

probation, be deported or leave the state during the period of probation. Most counties handle failure to provide cases under a probation order and thousands of dollars are collected for the support of minor children.

At the present time not over ten percent of those who apply receive outright probation. In most instances the Court in granting probation includes some special order such as mentioned above, designed to protect the interests of the public and particularly those who have been injured through the criminal acts of the probationer. One can readily see that the Probation officers and the Courts are doing their utmost to administer probation consistantly with the public's good and are doing their utmost to select only worthy cases for probation.

PROBATION ELIMINATES CHARITY GIFTS

Another matter of economic importance is the fact that for every five men sentenced to prison there are two dependents left to be suported by relatives, friends or charity. Often these are minor children who through neglect may eventually come into the Juvenile Court and become public charges.

If the one released on probation has dependents he is called upon to support them.

PROBATION REFORMS

The fact that the vast majority of those placed on probation respond readily to this method of social adjustment and are later dismissed as having made good, proves that the real object of

and is often the cause of a physical and moral collapse which would not occur if steady and gainful employment were provided.

THE PROBATION OFFICER'S RESPONSIBILITY TO THE PUBLIC

The Probation Officer has been placed in a position of trust by the public and should select only those cases for probation which he feels can be rehabilitated. Before a case is recommended to the Court for probation it is thoroughly investigated and the previous record of subject as well as his character are carefully considered and conditions involving the present as well as past offenses of the petitioner are also included in the report of the probation officer which is furnished the Court. When the Probation officer appears before the public he must be able to say that the trust that has been placed in him has not been in vain. A vast majority of those placed on probation make good, and with a little encouragement and co-operation on the part of society, the use of probation could be greatly extended.

PROBATION SAVES MONEY FOR TAXPAYERS

The Constitution of the United States provides that every person charged with the commission of a crime is entitled to a jury trial. Due largely to the Probation law, seventy per cent(70pct.) of those appearing in the criminal courts plead guilty and apply for probation. The cost of a jury trial runs into many hundreds of dollars and the amount saved the probation if we fail to place in their hands the necessary facts which reveal that probation wisely and judiciously granted is instrumental in restoring many to good citizenship. An appeal should be made to churches, fraternal organizations, service clubs etc. to aid in this rehabilitation by supplying employment and the proper environment to those released on probation.

EIGHT THOUSAND ADULTS ON PROBATION IN CALIFORNIA (ADULT).

At the present time there are over 8,000 persons on Adult Probation in California. This is more than the number in the two prisons, and without probation two new prisons would have to be built. The upkeep of an individual in a California prison averages $228.13 per year. The cost of probation per year is only $26.65. This is an economic argument which can be offered to the taxpayer and cannot be answered by critics of probation. One can readily realize the added tax burden to property owners and others if probation was eliminated from our statutes and prison sentences meted out by our courts.

PROBATION WITH RESTRICTIONS

The Courts are granted much latitude in dealing with probationers under the provisions of Section No. 1203 of the Penal Code (The Adult Probation Law.) The probationer may be ordered to serve a certain period of his probation in the county jail, make restitution for damages resulting from the criminal act, pay a fine during the period of [illegible] to support them.

PROBATION REFORMS

The fact that the vast majority of those placed on probation respond readily to this method of social adjustment and are later dismissed as having made good, proves that the real object of probation has been successfully accomplished.

Probation wherever tried has proven to be successful and it is constantly being adopted throughout the United States and in many other countries, in an effort to assist those who are deemed worthy of an opportunity to make good outside prison walls.

Probation without proper supervision is apt to result in failure. Much better success could be obtained through cooperation of coordinating councils, service clubs, religious organizations and individuals in assisting to properly care for and supervise those granted this leniency by the State.

Public opinion is gradually being molded to the realization that punishment in itself has never in the centuries that it has been tried decreased the ranks of those of our anti-social class. Therefore, it becomes the fundamental duty not only of probation officers but of the courts, peace officers and others to devote more time in the correction of the causes of crime and to assist those men and women with anti-social characteristics brought to their attention to become useful citizens.

CARL L. MAY, Director, Supervision
Los Angeles County Probation
Department (Chairman of
Publicity Committee, California
Probation Officers' Association)

[fol. 92] EXHIBIT "B" TO AFFIDAVIT

COUNTY OF LOS ANGELES, PROBATION OFFICE

803 Law Building, 139 North Broadway,

Los Angeles, California

Refers To: ——

_____

_____

_____

DEAR SIR:

The above named person has applied for probation, having been convicted on a charge of ——.

Will you kindly write this department, 803 Law Bldg., Los Angeles, and state how long you have known this defendant and whether your knowledge has been in a social or business way. We would appreciate information as to his conduct, habits and tendencies.

Have you information as to any prior arrests or convictions of the party applying for leniency?

Any other information, including the mental and physical condition of the defendant or his family, will be of help to us and will be appreciated.

It is important that we receive an early reply in order that a proper presentation of the case may be made to the Court.

Yours very truly, K. J. Scudder, Probation Officer, by John M. Zuck, Director Adult Division.

Prob. 62 5m 3-38

(Here follows 1 photolithograph, side folio 92a)

[fol. 93] EXHIBIT NO. 11

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

No. 428920

In the Matter of THE TIMES-MIRROR COMPANY, a Corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, Respondents, In Contempt

JUDGMENT

This proceeding in contempt against respondents was instituted by the filing in this court, on June 3, 1938, of an

affidavit subscribed and sworn to by J. Louis Elkins, Executive Secretary of the Los Angeles Bar Association, containing five counts of contempt of court, alleged to have been committed by the respondents. Said affidavit was presented to the court by Allen W. Ashburn, Michael G. Luddy, Isaac Pacht, and Arnold Praeger, as attorneys for the Los Angeles Bar Association. Based on this affidavit, the court ordered respondents to appear before the Court in Department 1 thereof, on June 23, 1938, at 10:00 o'clock a. m., to show cause why they should not be adjudged guilty of contempt of court and punished therefor by reason of the acts and each of the acts set forth in each of the five counts contained in said affidavit and alleged to have been committed by the respondents and each of them.

The respondents filed a demurrer, both general and special, and at the date of hearing of said demurrer, towit, on the 5th day of July, 1938, through their counsel, Messrs. Cosgrove & O'Neil and F. B. Yoakum, orally moved and objected as follows: (1) For an order directing that the [fol. 94] name of each attorney appearing herein with the name of the person or organization on whose behalf he appears be stated in open court and entered in the minutes by the clerk. (2) For an order directing that this proceeding be entitled "People of the State of California vs. The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, Respondents, In Contempt." (3) Objecting to any party other than the State of California prosecuting this proceeding and objecting to any attorney appearing or acting or being permitted to appear or act as prosecuting attorney herein other than the Attorney General of the State of California or the District Attorney of Los Angeles County. (4) Objecting to the Los Angeles Bar Association, or any Committee of said association, or anyone appearing, or claiming to appear, as attorney for said association, or for any committee of said association, appearing or acting or being permitted to appear or act as attorney or attorneys for the prosecution of this proceeding. (5) For an order directing that the District Attorney for the County of Los Angeles, and the Attorney General for the State of California, be notified of this proceeding and for a further order directing that no other or further proceeding be had or taken herein until said District Attorney or said Attorney General shall appear herein as attorney for the prosecution of this proceed-

ing. (6) Objecting to any proceedings being taken herein unless and until the People of the State of California are made a party hereto and appear herein by the proper officer of said State in that behalf duly authorized. (7) Objecting to the Los Angeles Bar Association or any committee of said Association or anyone appearing or claiming to appear as [fol. 95] attorney for said Association or for any committee of said Association controlling or directing either as attorney of record or otherwise, this prosecution.

At the hearing of said demurrer and said oral motion and said oral objections, the said attorneys for the Los Angeles Bar Association appeared as friends and officers of the court to assist the court in the prosecution and hearing of said proceeding, and pursuant to an order of court, permitting him so to do, A. L. Wirin, Attorney for the American Civil Liberties Union, appeared as amicus curiae on behalf of the respondents.

At said hearing, the court permitted said attorneys for the Los Angeles Bar Association to appear herein for the Los Angeles Bar Association and prosecute these proceedings as officers of the court and made an order overruling said oral motion and objections made by respondents.

Thereafter, towit, on the 18th day of August, 1938, the court made an order sustaining the demurrer of respondents as to counts (2) and (4) in said affidavit, without leave to amend, and overruling the demurrer as to the counts (1), (3), and (5), and granted the respondents five days within which to answer (their counsel having indicated this to be sufficient time).

The respondents filed individual answers within the time provided by said last mentioned order and the respondent Harry Chandler filed an affidavit in support thereof, and respondents also filed an affidavit subscribed and sworn to by Frank B. Yoakum, Jr., in support of the answers filed by the respondents.

[fol. 96] That this proceeding came on for hearing on the 25th day of August, 1938, in Department No. 34 of the above entitled court, before the Honorable Emmet H. Wilson, Judge thereof presiding, the respondents Norman Chandler and L. D. Hotchkiss appearing in person, the respondent Harry Chandler not appearing in person, Messrs. Cosgrove & O'Neil and F. B. Yoakum appearing for all respondents, and Messrs. Allen W. Ashburn, Isaac Pacht, Michael G. Luddy, and Arnold Praeger appearing for Los Angeles Bar

Association and officers of the Court to assist in the prosecution of this proceeding. Thereupon, the court proceeded to investigate the charges contained in counts (1), (3), and (5) of said affidavit of J. Louis Elkins and heard the answers and affidavits filed by or on behalf of respondents and examined witnesses for and against said respondents.

It appearing that the order to show cause having issued, a due return and appearance having been made by The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, the respondents herein, and the court being fully advised in the premises,

It is ordered and adjudged:

1. The Court finds that the allegations of counts (1), (3), and (5) of said affidavit of J. Louis Elkins respecting the respondent The Times-Mirror Company are true and that the said respondent, The Times-Mirror Company, a corporation, is guilty of contempt of court as specified, and in the particulars set forth in the order to show cause herein and in the said affidavit of J. Louis Elkins in counts (1), (3), and (5) thereof, and that as punishment therefor, the Court orders that the said respondent, The Times-Mirror Company, a corporation, shall pay a fine of $100.00 on count (1), $100.00 on count (3), and $300.00 on count (5), as set forth [fol. 97] in said affidavit, making in all the sum of $500.00, for which amount let execution issue.

2. The Court finds the respondents Harry Chandler and Norman Chandler not guilty of contempt of court as to all three of said counts in said affidavit.

3. The Court finds the respondent L. D. Hotchkiss not guilty of contempt of court on counts (3) and (5) as set forth in said affidavit.

4. The Court finds that the allegations of count (1) as set forth in said affidavit of J. Louis Elkins respecting the respondent L. D. Hotchkiss are true and finds the respondent L. D. Hotchkiss is guilty of contempt of court as specified, and in the particulars set forth in the order to show cause herein and in count (1) of said affidavit of J. Louis Elkins, and orders him, the said L. D. Hotchkiss, to pay a fine of $100.00 on said Count (1), and that in default of payment thereof, the said L. D. Hotchkiss shall stand committed to the Sheriff of the County of Los Angeles, State of California, and, until such fine is paid, he shall be imprisoned

in the county jail of said county at the rate of one days' imprisonment for each $2.00 of said fine.

Execution and committment are and each is stayed for thirty days.

Dated: This 31st day of August, 1938.

Wilson, Judge of the Superior Court.

[fol. 98] *Duly sworn to by H. E. Downing. Jurat omitted in printing.*

[fols. 99-105] In Supreme Court of California

[Title omitted]

Memorandum of Points and Authorities in Support of Petition for Writ of Review

Your petitioners respectfully submit to this Honorable Court the following points and authorities in support of their Petition for Writ of Review:

* * * * * * *

[fols. 106-107] V

The Order Adjudging Petitioners Guilty of Contempt of Court Violates the Rights of Freedom of Speech and of the Press Guaranteed by the State and Federal Constitutions

California Constitution, Art. I, Sec. 9;
United States Constitution, Amendments One and Fourteen;
In re Shortridge, 99 Cal. 526;
In re Shuler, 210 Cal. 377;
In re Matter of Lyons, 94 Cal. App. Dec. 70; 81 Pac. (2d) 190 (decided June 24, 1938).

"In a republic it is necessary that the rights of freedom of speech and freedom of the press be zealously guarded by the courts. Those rights form the life stream of liberty. History teaches us that when those rights are suspended,

the right to possess and enjoy private property rapidly vanishes."

94 C. A. D. 78.

Gitlow v. New York, 268 U. S. 652, 666;
Whitney v. California, 274 U. S. 357, 371, 373;
Fiske v. Kansas, 274 U. S. 380, 382;
Stromberg v. California, 283 U. S. 359, 368, 369;
Near v. Minnesota, 283 U. S. 697, 707, 714-715, 716;
Grosjean v. American Press Co., 297 U. S. 233, 243, 244, 248, 249-250;
Lovell v. City of Griffin, 302 U. S. —, 58 S. Ct. 666, 668, 669.

* * * * * * *

[fol. 108] Respectfully submitted, Cosgrove & O'Neil, T. B. Cosgrove, F. B. Yoakum, Jr., Attorneys for Petitioners.

[fol. 109] In Supreme Court of California

[Title omitted]

Writ of Review

The People of the State of California Send Greeting to the Superior Court of the State of California, in and for the County of Los Angeles:

Whereas, it has been represented to this court by the verified petition of petitioners above named, on file herein, that you, the said Superior Court of the State of California, in and for the County of Los Angeles, have made, signed, filed and caused to be entered a judgment or order adjudging petitioners and each of them in contempt of court; and

Whereas, it has been further represented to this court by said petitioners that said order or judgment was and is erroneous and void for the reasons set forth at length in said petition and which fully appear from said petition on file herein, reference thereto being hereby made; and

Being willing that the records and proceedings in said matter, upon which said order or judgment is based, and that all matters relating thereto shall be certified and returned by you to this court;

It Is Ordered, that you, the above named respondent, [fols. 110-112] The Superior Court of the State of California, in and for the County of Los Angeles, certify or cause to be certified and returned to this court on the 7th day of December, 1938, at the hour of 10 o'clock A. M. on said day, at the court room of this court in the State Building at Los Angeles, California, a full, true and correct transcript of all papers, records, files and proceedings in said proceeding above specified pending before you, in your possession or under your control, in order that the same may be reviewed by this court and such action taken thereon as of right and as, according to law, shall be taken and done, and that you then and there have this writ.

And pending the action of this court thereon, you, the respondent above named, are commanded and required to desist from further proceedings in said matter, and that all proceedings for the execution of the order or judgment entered against petitioners on the 1st day of September, 1938, be stayed.

* * * * * * *

Witness the Honorable William H. Waste, Chief Justice, and the Associate Justices of the Supreme Court of the State of California.

Attest my hand and the seal of this court this 6th day of October, 1938.

B. Grant Taylor, Clerk of said Court, by L. F. White, Deputy. (Seal.)

* * * * * * *

[fol. 113] IN SUPREME COURT OF CALIFORNIA

L. A. No. 16928

THE TIMES-MIRROR COMPANY, a Corporation, and L. D. HOTCHKISS, Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

L. A. No. 16929

THE TIMES-MIRROR COMPANY, a Corporation, HARRY CHANDLER AND L. D. HOTCHKISS, Petitioners,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

Stipulation Concerning Record of Proceedings Under Review

It Is Hereby Stipulated by the parties hereto and their respective counsel as follows:

1. A consolidated record may be presented and used by the court in response to the Writs of Review issued in the proceedings as above entitled.

2. Those certain pleadings hereinafter enumerated, appearing in the Petition for Writ of Review in each of the above entitled matters, may be considered a part of the consolidated record upon review herein—that is to say:

[fols. 114-115] First, in L. A. No. 16928, the following pleadings appearing in the petition, viz:

Exhibit No. 1—Affidavit of J. Louis Elkins;
Exhibit No. 2—Order to Show Cause;
Exhibit No. 3—Demurrer of Respondents;
Exhibit No. 5—Answer of Respondent The Times-Mirror Company, a corporation;
Exhibit No. 6—Answer of Respondent Harry Chandler;
Exhibit No. 7—Answer of Respondent Norman Chandler;
Exhibit No. 8—Answer of Respondent L. D. Hotchkiss;

Exhibit No. 9—Affidavit of Respondent Harry Chandler upon Order to Show Cause;

Exhibit No. 10—Affidavit of F. B. Yoakum, Jr., upon Order to Show Cause;

Exhibit No. 11—Judgment of the Trial Court.

* * * * * * *

[fols. 116-117] 3. The motions and objections and the rulings and exceptions thereon, hereinafter enumerated, appearing in the Petition for Writ of Review in each of the above entitled matters, may be considered a part of the consolidated record upon review herein—that is to say:

First, in L. A. No. 16928, the following:

(a) The motions and objections and grounds assigned in support thereof, appearing on pages 4 and 5 of the petition.

(b) The recitals of presentation, argument, rulings and exception appearing on page 6 of said petition, reading as follows:

"Thereupon on said 5th day of July, 1938, following the presentation of argument by counsel for respondents (petitioners herein) in support of the motions and objections and following the presentation of argument by counsel for the Los Angeles Bar Association in opposition to the motions and objections, said motions and objections were, and each one thereof was, denied and overruled. Counsel for the respondents, and each one thereof (petitioners herein), took and saved an exception to the rulings of the court on each of said motions and each of said objections."

* * * * * * *

[fols. 118-119] 4. Certain statements of counsel for petitioners herein, made at the time of argument of demurrers to sufficiency of affidavits upon order to show cause, which statements appear in the Petitions for Writ of Review in the above entitled matters, may be considered a part of the consolidated record upon review herein—that is to say:

First, in L. A. No. 16928, the following:

Exhibit No. 4, being statements of counsel for respondents (petitioners herein).

* * * * * * *

[fol. 120] 5. The proceedings of Thursday, August 25, 1938, hereinafter set forth, constitute a correct and complete copy of all proceedings had and taken on the trial of the contempt proceedings now pending before the above entitled court upon writs of review:

"In the Superior Court of the State of California, in and for the County of Los Angeles

Department No. 34, Hon. Emmet H. Wilson, Judge

No. 428-920

In the Matter of the Times-Mirror Company, et al.

No. 429-179

In the Matter of the Times-Mirror Company, et al.

Reporter's Transcript of Testimony and Proceedings on Trial of Cause

Appearances: No. 428-920

Allen W. Ashburn, Michael G. Luddy, Isaac Pacht and Arnold Praeger, Esqs., for California State Bar Association.

Appearances: No. 429-179

Allen W. Ashburn, Michael G. Luddy, Isaac Pacht and Arnold Praeger, Esqs., for California State Bar Association.

Cosgrove & O'Neil, by T. B. Cosgrove, Esq., and F. B. Yoakum, Jr., for Respondents.

Los Angeles, California, Thursday, August 25, 1938.

[fol. 121] Los Angeles, California, Thursday, August 25, 1938, 10:00 A. M.

The Court: You may proceed with the Times cases.

Mr. Cosgrove: We have the two cases and I presume we have to go along with them as two separate and distinct cases. I have given some consideration to the question of introduction of evidence, and I would be glad to stipulate if during the presentation of the evidence in one case, if it

appeared to the court and counsel that it was relevant to the other, we would be glad to make a stipulation to that effect.

Mr. Luddy: Yes.

The Court: You may proceed with the first case, No. 428-920.

Mr. Luddy: I will call Mr. Trueblood to the stand.

Mr. Cosgrove: The court understands Mr. Trueblood is very hard of hearing.

Ralph W. Trueblood, called as a witness by and on behalf of the plaintiffs herein, being first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Ralph W. Trueblood. 184 Rockingham Avenue, Brentwood Park.

Direct examination.

By Mr. Luddy:

Q. What is your business or occupation, Mr. Trueblood?

A. I am a newspaper man.

Q. And you are connected with what newspaper?

A. "The Los Angeles Times."

Q. You have been connected with that paper for approximately thirty years, have you not?

A. Somewhat less than that, about 27, I think.

[fol. 122] Q. And during that period of time you have occupied various positions, starting out as reporter, continuing on through city editor, assistant managing editor, managing editor and executive editor, have you not?

A. That is correct.

Q. And at the present time what, if any position, do you occupy with "The Times"?

A. I have charge of the editorial page.

Q. Does that position carry with it any title such as "executive editor" or some similar title?

A. I am sometimes referred to as "editorial director." It is not a formal title.

Q. During what period of time have you occupied the position of editorial director?

A. Since approximately the 1st of February of this year.

Q. Prior to the 1st of February of this year and for a period of approximately one year prior thereto what had been your position with "The Times"?

A. I was on sick leave during that——

Q. Over what period of time were you on sick leave?

A. About one year and one month.

Q. And do you remember about the approximate date that you returned to "The Times", the conclusion of your sick leave?

A. About the 1st of February.

Mr. Cosgrove: Will you speak a little louder, please?

A. I beg pardon?

Q. Will you speak a little louder, please?

Mr. Luddy: I am prone, like most lawyers, when I am asking questions of someone that has difficulty in hearing to talk too loud. If I should talk too loud, do not hesitate to tell me. Will you please tell us in more detail just what your duties have been as editorial director of "The Times" during the period you have occupied that position?

[fol. 123] A. Well, my principal duty has been the preparation under my direction of the material which is published on the editorial page. In a general way I might be said to have, in that capacity, to have charge subject to the general direction of the president and general manager of the company of policy matters.

Q. Do you actually write editorials, or have you since the time you have returned?

A. I have, some of them, yes.

Q. Are there men under your direction whose duty it is to write editorials for "The Times"?

A. That is correct.

Q. How many men are engaged, if not entirely, principally, in the writing of editorials?

A. Three and occasionally four.

Q. And are the editorials submitted to you before they actually appear in the newspaper?

A. That is correct.

Q. I think you made some reference to direction or supervision of the president and general manager of the paper or of the corporation. To whom did you have reference in your answer?

A. To Mr. Harry Chandler, President of "The Times Mirror Company," and to Mr. Norman Chandler, Vice-president and General Manager.

Q. Are there daily round-table sessions or conferences at all between you and other persons connected with "The Times" with respect to matters which appear on the editorial page or the general reading content from time to time?

A. No, sir.

Q. Do you have the duty and is it your responsibility to pass upon the question of whether any particular editorial which may have been written shall or shall not appear in the paper?

[fol. 124] Mr. Cosgrove: I object to the question. The witness is being called upon to state a conclusion. The court would decide that.

Mr. Luddy: I will withdraw the question.

Q. Who, if anybody, at "The Times" determines whether or not a particular editorial which has been prepared shall appear in the paper?

A. It is almost impossible to answer that question. It would depend upon the editorial. In a general way, I decide whether or not it shall appear.

Q. In the event that it is an editorial which does not fall within that general class that you decide upon, then who decides upon it?

A. It would in that case be referred to the president of the company.

Q. That is Mr. Harry Chandler?

A. That would be Mr. Harry Chandler.

Q. I understand that you were away on your sick leave in December and particularly on December 21, 1937, is that right, Mr. Trueblood?

A. That is correct.

Q. Therefore I take it you know nothing at all about any editorials which may have appeared in "The Times" at that period?

A. Only as having read them.

Q. Afterwards. Did you read them afterwards?

A. I did.

Q. During the time you were on sick leave were any editorials referred to you prior to the time they appeared in the paper?

A. I don't recall any.

[fol. 125] Q. During the time you were on your sick leave, Mr. Trueblood, do you know who assumed and performed the duties which you had been performing up until the time you left?

A. Yes, sir.

Q. Who was it?

A. Mr. L. D. Hotchkiss.

Q. You were the editorial director of "The Times," were you not, on the 14th of April, 1938?

A. Yes, sir.

Q. Do you know who wrote the editorial which appeared in the issue of "The Times" on April 14, 1938, entitled, "The Fall of an Ex-Queen"?

A. Yes.

Q. You were editorial supervisor or director, rather, of "The Times" on May 5, 1938, were you not, Mr. Trueblood?

A. Yes, sir.

Q. Do you know who wrote the editorial which appeared in the May 5, 1938, issue of "The Times" entitled "Probation for Gorillas"?

A. I do.

Q. Were you the editorial director of "The Times" on June 5, 1938?

A. I was.

Q. Do you know who wrote the editorial entitled "A Black Committee Here", which appeared in the June 5, 1938, issue of "The Times"?

Mr. Cosgrove: Of course, that is not involved in this action.

The Court: We have not reached that.

Mr. Luddy: I understood that any testimony—maybe I misunderstood our stipulation.

[fol. 126] The Court: I think we were going to try the first case first and then proceed with the second and anything that appears to have been introduced in the first that may be applicable in the second may be deemed to be introduced in the second case.

Mr. Luddy: All right.

Q. Do you know who wrote the editorial "Sit Strikers Convicted", which appeared in the December 21, 1937, issue of "The Times?"

A. No, sir.

Q. Who wrote the editorial entitled "The Fall of an Ex-Queen", which appeared in the April 14, 1938, issue of "The Times"?

Mr. Cosgrove: Now, if the court please, for the purpose of the record, this answer will incriminate this witness. I know what he will answer. But we are not going to object to it. We want the court to understand and we want counsel to understand we are not making any secret of who wrote these editorials, that they were written in the utmost good faith, in the belief that they were well within the law and accordingly we, without the slightest hesitation, allow the witness to proceed to answer the question, although this answer will incriminate the witness.

Mr. Luddy: I think that is very fair. You may answer it.

A. I wrote the editorial.

Q. Who wrote the editorial "Probation for Gorillas" which appeared in the May 5, 1938, issue of "The Times"?

A. Edward C. Krauss wrote the editorial at my direction.

Q. That is the "Probation for Gorillas" editorial?

A. That is correct.

Q. Mr. Krauss, did you say?

A. Edward C. Krauss.

[fol. 127] Q. At the time that the editorial entitled "The Fall of an Ex-Queen" was written, did you submit it to any other or any officer of "The Times-Mirror Corporation" prior to the time it appeared in the paper?

A. No, sir.

Q. And did you discuss it in any manner with Mr. Hotchkiss, Mr. Harry Chandler or Mr. Norman Chandler?

A. I did not.

Q. Do you know whether or not any proofs of the editorial or any proofs of the editorial page were submitted to either of the Messrs. Chandler or Hotchkiss prior to the time that editorial was published?

A. If you mean by the word "submitted" that they were intentionally brought to the attention of these gentlemen for the purpose of examining or passing upon them, the answer is no.

Q. I don't necessarily mean that, Mr. Trueblood. Perhaps I can bring out what I had in mind by asking whether or not it is the custom and practice at "The Times" to submit proofs of the editorial page or of editorials to either Mr. Hotchkiss, Mr. Harry Chandler or Mr. Norman Chand-

ler prior to the time the paper is actually made up and printed?

A. It is not. I might elaborate that by saying, however, that proofs of editorial matter would in the normal course of the office routine come under the attention of the managing editor but not, however, Mr. Norman Chandler or Mr. Harry Chandler.

Q. By the "managing editor" you refer to Mr. Hotchkiss?

A. I refer to Mr. Hotchkiss.

Q. Tell us in what fashion the proposed contents of the editorial page prior to its publication would come to the attention of Mr. Hotchkiss?

[fol. 128] A. That would be merely incidental to his general supervision of the paper. Practically all matter which is intended for publication on the day succeeding is taken in proof form and eventually finds its way to the managing editor's desk.

Q. So that if the ordinary routine is carried out there at "The Times" matters which it is proposed to have appear in next day's issue of "The Times," whether it be editorial or other reading content, would come to Mr. Hotchkiss' desk prior to the time it is published?

Mr. Cosgrove: The question is objected to on the ground it is summing up all the evidence and does not call for a recital of facts.

The Court: Sustained.

By Mr. Luddy:

Q. You say Mr. Krauss wrote the editorial entitled "Probation for Gorillas" and that he wrote it under your direction?

A. That is correct.

Q. What, if anything, did you suggest to him as to what the editorial should contain?

A. As I recall it, I handed him a clipping of a news story in which it was stated that two convicted defendants in a strike assault case had made application for probation. I told him it has been our understanding for many years and under such instances it was the privilege of a newspaper or of anyone qualified to pass an informed opinion on the subject to express that opinion as to whether or not probation should be granted. I told him in substance and effect that

I did not believe probation should be granted and I thought we should vigorously oppose it.

Q. After that conversation did he proceed to write an editorial on the subject?

[fol. 129] A. He did.

Q. Was the editorial submitted to you in typewritten form after he had completed it?

A. That is correct.

Q. Do you recall whether or not you or anybody else at "The Times" made any changes, amendments or corrections at all on it as it was submitted by Mr. Krauss?

A. It is quite possible some changes were made in it but I don't recall what they were. They were not very important changes in any case.

Q. Was that editorial or the contents thereof discussed with Mr. Harry Chandler or Mr. Norman Chandler by you or by anybody else, to your knowledge?

A. It was not.

Q. Did it come, to your knowledge, to the attention of Mr. Hotchkiss, the managing editor, prior to the time it was published?

A. Not to my knowledge.

Q. Was it a part of the proofs of the reading matter which was submitted to Mr. Hotchkiss in his capacity as managing editor, together with other editorials or other reading matter prior to the time it appeared?

A. I could not say.

Q. Who do you recognize in "The Times" organization as being your immediate superior?

A. Mr. Harry Chandler.

Q. Who has the final word at "The Times" as to whether or not anything shall appear therein, either on the editorial page or anything else?

A. Mr. Harry Chandler.

[fol. 130] Q. In the event Mr. Harry Chandler should submit an editorial or any other reading matter, is there anybody connected with the organization that so far as you know has any right to say that matter shall not appear in "The Times"?

A. I did not get the question.

Q. In the event Mr. Harry Chandler shall submit a proposed editorial or any other proposed reading matter for an issue of "The Times," so far as you know, is there anybody connected with "The Times" or "The Times Mirror Com-

pany" that would have the right to tell Mr. Chandler the particular proposed article should not appear?

A. No, sir.

Q. You have referred to the fact that Mr. Norman Chandler, I believe, carries the title of general manager of the corporation, is that right?

A. That is correct.

Q. And is he known as the general manager of "The Times"?

A. Mr. Norman Chandler? That is correct.

Q. You have referred to the fact Mr. Harry Chandler is the president of the corporation, that is, "The Times Mirror." Does he hold any other title at "The Times," for instance, is he known as editor or publisher?

A. He of course is a director of the corporation. His title, however, is president of "The Times Mirror Company."

Q. Is he known at all as the editor of the paper?

A. He is frequently referred to as the "publisher" of the paper. The word "editor" of the paper is not commonly used nowadays as referring to the publisher. The active head of the newspaper is commonly referred to as "the publisher."

[fol. 131] Q. It is a fact, is it not, Mr. Trueblood, that to all of the employees of "The Times" Harry Chandler is the chief, he is the boss, is he not?

A. That is correct.

Q. I think that for a considerable period of time, Mr. Trueblood, you had been managing editor of "The Times," had you not?

A. I was managing editor for some years, yes, sir.

Q. And were you succeeded as managing editor by Mr. Hotchkiss?

A. I was.

Q. How long has Mr. Hotchkiss been managing editor of "The Times"?

A. I think since 1934. I won't be positive of that.

Q. And as managing editor does he perform the same duties which you performed when you had that title?

A. Well, there was some shifting about of duties at the time. When Mr. Hotchkiss became managing editor I became Editor in Chief. I resigned as Editor in Chief during the period of my sick leave and the office of Editor in Chief was then discontinued. Substantially speaking, the same

duties that I performed as managing editor have now devolved upon Mr. Hotchkiss, except the direction of the editorial page which is now vested in myself.

Q. I take it then you are familiar with the duties which Mr. Hotchkiss has had to perform for at least the past year in his capacity as managing editor of "The Times", are you not?

A. Yes, sir.

Q. Will you please tell the court what those duties are?

A. Well, they are rather numerous and rather complicated. In a general way, the managing editor has super-[fol. 132] vision of all of the reading matter which appears in the daily and Sunday editions of "The Times." That is about as comprehensive and simple a statement of the duties as I can make.

Q. And having supervision of all reading matter that also includes, does it not, matters which appear upon the editorial page and which are strictly speaking, known as editorials?

A. During the period of my absence, during my sick leave, that is correct.

Q. And upon your return, duties were divided so that you then took over exclusively the matter of supervision of the editorial page?

A. That is correct.

Q. But it is a fact, is it not, that the proofs of proposed editorials appearing upon the editorial page in the course of the routine operations of "The Times" would come through the desk of Mr. Hotchkiss, the managing editor, do they not?

A. That would not necessarily follow. That is a routine which is supposed to be followed in a general way. That does not, however, imply that because a proof of an editorial, we will say, comes to the desk of a managing editor that he assumes any responsibility whatever for that. Under our system I am personally responsible for what appears on the editorial page and no responsibility is shared by Mr. Hotchkiss in that regard.

Q. Before an issue of "The Times," and incidentally when I ask you these questions which appear to be of a general nature, I am referring to a period of time covered by approximately the past year—when an issue of the paper is about to go to press, who supervises the final work of de-

termining what shall go in and what shall not, if there be any question at all about that?

[fol. 133] A. That is divided among a number of departments. The general head and final arbiter of that in that case would be the managing editor.

Q. That would be Mr. Hotchkiss?

A. That would be—each department endeavors to settle its own space problems to the best of its ability.

Q. Assuming any question shall arise either as to you and Mr. Hotchkiss or anybody else, any other department heads of the paper as to whether a particular matter should or should not appear in the paper, an editorial or other reading matter, to whom would that be referred, whose decision would be final on it, for instance?

A. Pardon me. Do I understand you to mean if there were a conflict of opinion of whether or not certain matters should appear?

Q. That is right.

A. In that case the head of the company would be called upon to decide.

Q. That is Mr. Harry Chandler?

A. That is Mr. Harry Chandler.

Q. During the past year what, if anything, has Mr. Harry Chandler personally had to do or actively had to do with the publication of the paper, that is, can you tell us what he does down there at "The Times?"

A. I am afraid I am not qualified to answer that question. I am not closely enough in touch with Mr. Harry Chandler's office to be able to make a proper and comprehensive answer.

Q. Do your duties bring you in daily contact with Mr. Harry Chandler?

A. Not daily. I confer with him frequently but not daily.

Q. Do your duties bring you in daily contact with Mr. Norman Chandler?

[fol. 134] A. Not daily, no, sir.

Q. Are you qualified to tell us what Mr. Norman Chandler has to do with the publication of the paper?

A. Not otherwise than is implied in the titles which attach to his office.

Q. Tell us what that is, what is implied from that term.

A. I would say that the title of general manager, vice-president and general manager entail the duties of general business supervision of the activities of the paper and supervision of the entire paper subject to the prior direction of

the president and in general acting as vice-head of the newspaper.

Q. Do you know whether or not during the past year Mr. Harry Chandler has been at the plant of "The Times," the paper, as published daily?

A. Repeat the question.

Q. Do you know whether or not during the past year Mr. Harry Chandler has daily appeared at the plant where "The Times" is published, its building over here?

A. Mr. Harry Chandler is frequently absent from the city on business and other trips. With those exceptions since my return to "The Times" at least, he has been in the office every day.

Q. When he is not away on business and comes to the office do you know about what time he comes to his office at "The Times"?

A. I think usually between 10:00 and 11:00 in the morning.

Q. How late does he stay there?

A. About 6:00 o'clock usually.

Q. Does he return in the evening or is he there later?

A. That has not been his custom of late years.

[fol. 135] Q. Do you know how frequently Mr. Norman Chandler is at his office, and I take it he has an office at "The Times" Building, do you know how frequently he is at his office?

A. Mr. Norman Chandler, to the best of my knowledge and belief, is at his office every day, every business day.

Q. Do you know how late he stays there?

A. I couldn't say. I think that depends to some extent upon the immediate requirements upon his time.

A. Is Mr. Norman Chandler's office on the same floor or in the same part of "The Times" plant that Mr. Harry Chandler's office is located?

A. That is correct.

Q. Are they adjacent?

A. Not immediately adjacent but within two doors of it.

Q. And is that in what is known as the Editorial Department of the paper?

A. No, sir, it is on a different floor.

Q. What floor is the Editorial Department on?

A. The third floor.

Q. On what floors do the Messrs. Chandler have their offices?

A. On the fourth floor.

Q. The business office as such is on the ground floor, is it not?

A. A part of the business of "The Times" is conducted on the ground floor, part of it on the second floor and others elsewhere in the building.

Q. About what time of the day, afternoon or evening is the first edition of "The Times" laid out and gotten ready for publication, printing?

[fol. 136] A. That is outside of my jurisdiction, at present. However, the first edition of "The Times" appears on the street between 5:30 and 6:00 in the evening, which would mean that it would be in process of assembling for 45 minutes or an hour prior to that time.

Q. In the event Mr. Harry Chandler or Mr. Norman Chandler should not be at their offices in "The Times" when that first edition appears, do you know whether or not a copy of it is sent to them if they are in the city and in their homes?

A. Not to my knowledge.

Q. Do you know of anybody connected with "The Times" that would be able to tell us whether or not a copy of the first edition is sent to Mr. Harry Chandler and Mr. Norman Chandler in the event they should not be at "The Times" plant when it is published?

A. Presumably, if a special order is in effect to cause such copies to be delivered, the circulation manager would be notified of it.

Q. Who is the circulating manager?

A. Mr. Karl Marks—his last name is Marks, but I am not sure of his first name.

Q. Do you know whether or not any proofs of editorials or any other reading matter are sent to the office of Mr. Harry Chandler or Mr. Norman Chandler just before any edition of the paper in which it is proposed to have that matter appear is published?

A. Very seldom is an editorial proof sent to the office of either officer just prior to its intended publication. If it is a matter on which it is desired their judgment or criticism [fol. 137] or opinion, it is usually sent up far enough ahead so that they will have time to consider it.

Q. Are there special editorials referred to Mr. Norman Chandler?

A. Not often to Mr. Norman Chandler unless he has expressed a particular interest in that particular subject. Usually they go to Mr. Harry Chandler.

Q. Do most of the editorials which it is proposed to have appear in the paper go to Mr. Harry Chandler?

A. Very few of them go to Mr. Harry Chandler in proof.

Q. Do you know whether the editorial entitled "Probation for Gorillas" went to Mr. Harry Chandler before it appeared?

A. It did not.

Q. Do you know whether he was in the city at the time that appeared?

A. I don't recall whether he was or not.

Q. Like every newspaper, I take it for granted that "The Times" has certain well-known editorial policies, does it not? You have been with the publication for approximately 30 years, that is a fact, is it not, Mr. Trueblood?

A. That is correct.

Q. And I take it you are familiar with the editorial policies of "The Times" that have been developed over that period of time or which might have been in existence when you first went to work for "The Times," is that right?

A. In a general way I would say that is correct.

Q. Have you had occasion to discuss with Mr. Harry Chandler the matter of what the policy of "The Times" and its editorial page shall be with respect to the activity of persons who are involved in labor disputes or controversies between employer and employees here in California?

[fol. 138] A. I have discussed the general subject with him on numerous occasions, but not with reference to any specific editorial.

Q. Has he told you what the general policy of "The Times" shall be on that matter?

A. It has not been necessary for many years.

Q. What has been the general policy of "The Times" on that for many years?

A. The general policy of "The Times" on—that is so inclusive a question that perhaps the best I can say is that our policy has been to uphold the principle of the open shop as we understand it and to the best of our ability.

Mr. Luddy: Mr. Cosgrove, you served upon us an affidavit of Harry Chandler. I don't know whether it has been officially filed or not. Has it?

Mr. Cosgrove: It is in the file.

By Mr. Luddy:

Q. Are you familiar with the contents of the Harry Chandler affidavit which has been filed here?

A. May I examine it?

Q. Surely. It is dated Jun[illegible]8, 1938. It is the only affidavit in the file, as I unders[illegible]d it, by Mr. Harry Chandler.

Mr. Cosgrove: That is right.

The Witness: Yes, sir. I am familiar in a general way with the contents of this affidavit.

By Mr. Luddy:

Q. And would you say that that editorial correctly states the policy of "The Times" as you know it—not editorial, but this affidavit correctly states the policy of "The Times" and of Harry Chandler?

A. I would say so.

Mr. Luddy: I think then as long as you have filed it here and intend, I suppose, to introduce it, I suppose we might just as well have the original considered as introduced now. [fols. 139-140] Mr. Cosgrove: Yes, I think the statement of the witness that the affidavit represents the editorial policy of the paper, and the affidavit being a part of the record and in evidence——

By Mr. Luddy:

Q. What do you call that part of the editorial page which appears daily on the editorial page just above the leading or first editorial?

A. That is commonly referred to as the "masthead".

Mr. Cosgrove: The defendants will stipulate that the masthead appearing in the issue of June 16, 1938, which counsel is about to offer into evidence is a copy of the masthead that appeared in each of the issues in which these various editorials appear which are the subject of this investigation.

Mr. Luddy: We will then just introduce into evidence this one copy of the editorial page, having in mind the only portion we desire in evidence is the portion which constitutes the masthead.

Mr. Judge Pacht: Will you identify it by date?

Mr. Luddy: It is in the stipulation.

The Court: Exhibit 1.

By Mr. Luddy:

Q. I think you have already testified, Mr. Trueblood, that there are three or four or several men who work under your direction and supervision whose duty it is to write editorials, is that right?

A. Yes.

Q. In the event that a new person is employed to write editorials or one of those previously employed is discharged, who does the hiring and firing of that particular person?

A. The incident has not arisen since the present set-up was inaugurated so I would not be able to answer that question. I presume there would be a consultation between [fol. 141] myself and the managing editor in a case of that kind.

Q. It has not been necessary to hire or fire an editorial writer since you returned from your sick leave?

A. That is correct.

Q. Prior to the time you went upon your sick leave if an editorial writer was employed or one discharged, who did the hiring and firing?

A. I would have done that.

Q. Who hired you?

A. Mr. Harry Andrews, who was the managing editor of "The Times."

Q. Who do you recognize as having the right to fire you?

A. At present, you mean?

Q. Yes.

A. Mr. Harry Chandler.

Mr. Luddy: That is all on the first counts.

Mr. Crosgrove: There is no cross-examination of the witness.

The Court: That is all.

Mr. Luddy: Then may we now continue with the witness on the second action?

Mr. Cosgrove: It will be agreeable but I think it may be confusing.

The Court: I think so, Mr. Luddy. You better postpone that until we finish this. If you will just tell him to remain.

By Mr. Luddy:

Q. You will remain here in court, will you, Mr. Cosgrove?

A. Yes, sir.

Mr. Luddy: Thank you. Mr. Cosgrove, I think that you and I had conferences and also a little correspondence about [fol. 142] some documents or papers that you said you would produce without the necessity of our subpoenaeing the secretary of the corporation and would also have available someone who actually does the duties of secretary of the corporation. Do you have that person here?

Mr. Cosgrove: Yes, that is correct. You sent me a letter and I am agreeable to have the letter introduced in evidence. Mr. Downing is here, assistant secretary, I handed the letter to him and he has made an effort to produce the record evidence which you asked. You may call him. Mr. Downing.

(Mr. Harris E. Downing was sworn.)

Judge Pacht: May it please your Honor, before Mr. Downing is interrogated, may I suggest that it may save some time if we have the morning recess now to enable us to examine the particular records that Mr. Downing has produced. It may be that we could dispense entirely with his testimony and in any event shorten it considerably.

The Court: Very well. Five minutes recess.

(After recess the following proceedings were had.)

Judge Pacht: We have decided, if the court please, that it is unnecessary to bother Mr. Downing with reference to any of these minutes or by-laws so if we may we would like to excuse him.

The Court: Very well. You are excused.

Judge Pacht: Thank you very much, Mr. Cosgrove, for making it possible for us to have these in court.

Mr. Luddy: If the court please, then we rest with respect to any further evidence on the so-called first count, the first cause.

The Court: The first case.

Mr. Luddy: The first case. I will get it right after awhile.

Mr. Cosgrove: We will call Mr. Norman Chandler.

[fol. 143] Defense

Norman Chandler, called as a witness by and on behalf of the defendants herein, being first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Norman Chandler.

Direct examination.

By Mr. Cosgrove:

Q. Mr. Chandler, you are the vice-president and general manager of "The Los Angeles Times"?

A. Yes, sir.

Q. And have been as far back at least as December 1, 1937?

A. That is correct.

Q. And prior to that time and at all times subsequent to December 1, 1937?

A. Yes, sir.

Q. Since this contempt proceeding was instituted have you had occasion to read this editorial which is the subject of the first count and which is entitled "Sit Strikers Convicted"?

A. I read the editorial after it was published but that is the only time.

Q. Mr. Chandler, did you see it before it was published?

A. No, sir.

Q. Did anybody speak to you about it before it was published?

A. No, sir.

Q. Did you know it was going to be published?

A. No, sir.

Q. And with reference to the editorial which forms the subject matter of the first count of the proceeding which is entitled "The Fall of an Ex-Queen," and relates to Mrs. Helen Werner, I will ask you to state whether or not you read that editorial.

[fol. 144] A. I read it after it was published.

Q. Did you see it before it was published?

A. No, sir.

Q. Did anyone discuss it with you before it was published?

A. No, sir.

Q. Did you know it was going to be published?

A. No, sir.

Mr. Cosgrove: You may cross-examine. Just a minute, please. I beg pardon. Calling your attention to the fifth count of the proceeding which relates to an editorial entitled "Probation for Gorillas", I will ask you if you read that editorial.

A. I read it after it was published.
Q. Did you read it before it was published?
A. No, sir.
Q. Did you know it was going to be published?
A. No, sir.
Q. Did anybody talk to you about its preparation or publication?
A. No, sir.

Mr. Cosgrove: You may cross-examine.

By Judge Pacht:

Q. Mr. Chandler, you have been, at least since you have become vice-president and general manager of "The Times", in rather close touch with your father as it appertains to his views concerning the conduct of the paper, its policies?

Mr. Cosgrove: Objected to as calling for the conclusion of the witness, speculation on the part of the witness and not cross-examination.
The Court: Sustained.
Judge Pacht: No cross-examination.
The Court: That is all.
The Witness: Do you need me any further?
Judge Pacht: Not so far as we are concerned, Mr. Chandler.
Mr. Cosgrove: Yes, there is another case coming on. I will call Mr. Hotchkiss.

[fol. 145] L. D. Hotchkiss, called as a witness by and on behalf of the defendants, being first duly sworn, testified as follows:

The Clerk: Will you state your name, please?
The Witness: L. D. Hotchkiss.

Direct examination.

By Mr. Cosgrove:

—. You are the L. D. Hotchkiss that appears as one of the respondents in this proceeding?
A. I am.

Q. Calling your attention, Mr. Hotchkiss, to an editorial which forms the first count, the subject matter of the first count of the present proceedings, contempt proceedings, and it is entitled "Sit Strikers Convicted," I will ask you if you are familiar with the editorial?

A. I am.

Q. You have read it?

A. I have.

Q. Do you know who prepared it?

A. I believe Mr. Krauss, Mr. Edward Krauss prepared it.

Q. And under whose direction?

A. Under my direction.

Q. Did you see it after it was prepared?

A. I did.

Q. Did you approve of it?

A. I did.

Q. And authorized it being placed in the issue of "The Times?"

A. I did.

Q. Of date about December 21st?

A. I believe that was the date.

Q. Did you consult Mr. Harry Chandler about this editorial?

A. I did not.

[fols. 146-168] Q. Do you know whether he saw it or not?

A. I do not know.

Q. Did he ever prior to its publication discuss it with you?

A. He did not.

Q. Did Mr. Norman Chandler?

A. No, sir.

Q. Calling your attention to an editorial which is entitled "The Fall of an Ex-Queen" and relates to Mrs. Helen Werner, which is the subject of the third count of this proceeding, I will ask you to state whether you had anything to do with its publication?

A. I had not.

Q. Were you consulted about it prior to its publication?

A. I was not.

Q. I call your attention to an editorial forming the subject matter of the fifth count entitled "Probation for Gorillas" and ask you to state if you read it.

A. I have.

Q. Did you read it before its publication?

A. After its publication.

Q. Did you have anything to do with its publication?

A. I did not.

Q. Did anybody consult you about it?

A. They did not.

Mr. Cosgrove: You may cross-examine.

Judge Pacht: No cross-examination, your Honor.

The Court: That is all.

Mr. Cosgrove: You may step aside. That is all the defendants have, your Honor.

The Court: Any rebuttal?

Judge Pacht: None, your Honor.

* * * * * * *

[fol. 169] STATEMENT

Mr. Cosgrove: If your Honor please, Judge Pacht said, or at least I understood him to say, that he thought it was not necessary, it would not be necessary to argue the case, and I agree with that. I would state my position to the effect it would not be justified. We argued here at great length and had ample opportunity to present and the court heard us with far more than ordinary patience and what appeared to me to be with more than ordinary attention. What was said reflected our best thought and stated, having in mind our limited facility of stating it, more persuasively than we could now state it, our position. We have read the decision of the court with much interest and I dare say with some considerable instruction and we appreciate that it represents on your Honor's part, as our efforts represented on our part, your very best efforts after hearing both sides of this matter and after giving the matter your mature, conscientious consideration, and we respect your opinion as such. We make this statement not only out of appreciation for the courteous consideration which we have been shown here, but the straight-forward and convincing manner in which your Honor has handled it. We have nothing further to say excepting this, that it might not have

been proper to say it upon argument, it may be proper to say it now, that these gentlemen whom we produced here this morning and who stated the facts as they know them, entertain conscientious, sincere belief that what they were doing was merely in compliance with what they understand to be the duty of a newspaper in publishing and intelligently commenting on the news, and I think that no one could sit here and hear the testimony of Mr. Trueblood without being convinced that the man honestly and sincerely be- [fol. 170] lieved that what he was doing was within the scope of his authority and I think that he convinced the court as he has always convinced me in my dealings with the man for many years, that he is an honest, sincere individual, and that he had no more idea of being in contempt of court than I have in appearing here on their behalf and urging, as I may be able to do, the law in support of what they believed and what I might say I honestly believe to be their right. They did not have any advice prior to the publication of these articles but I don't wish to have your Honor think that they would have done differently if I had the opportunity of advising them, for I honestly and sincerely believed and with great deference to the court I still honestly believe that with the possible exception of one of these editorials that they did not commit a contempt of court, but at the same time that like any other matter that is contested in the court is one in which counsel may have honest differences of opinion. We occasionally run into the fact, peculiar as it may be, that the Supreme Courts of the states do not always agree on these matters.

With reference to the liability of these particular individuals I am not going to make any argument. Mr. Hotchkiss was placed upon the stand by myself, took full responsibility for authorizing the publication of the first article, causing it to be prepared and approving it after it was prepared and causing it to be published, and Mr. Chandler with reference to the last two articles was consulted by Mr. Trueblood and saw the articles before they were printed and they were printed with his entire approval and accord. With reference to Mr. Norman Chandler I think that this being a criminal case, having in mind the intent must pre- [fol. 171] vail, I think there is an entire absence of any evidence that in any manner connects the gentleman with any of the editorials. I think the same is true with refer-

ence to Mr. Hotchkiss, clearly so with the exception of the very last editorial, the one in which Mr. Trueblood said to him in meeting him in the hallway that he was going to publish another editorial, but he didn't see it, didn't know anything about its contents, and in a civil action I don't think a man is liable for a crime even if he apprehends that one is about to be committed if he does not in any manner participate in it. But we are glad to leave that to the decision of the court.

FINDINGS

The Court: So far as the law is concerned I think it is set forth in considerable length in the Opinion that I filed and it would serve no purpose to say anything further or to repeat anything that is stated in the Opinion.

In the first case, No. 428-920, the court finds the respondent, The Times-Mirror Company, guilty upon Counts 1, 3 and 5, and imposes a fine of $100.00 on Count 1, $100.00 on Count 3 and $300.00 on Count 5.

The court finds Mr. Harry Chandler and Mr. Norman Chandler not guilty as to all three counts, that is, Counts 1, 3 and 5 of that proceeding; finds Mr. Hotchkiss guilty of Count 1 and imposes a fine of $100.00 with the alternative of one day in jail for each $2.00 that remains unpaid and finds Mr. Hotchkiss not guilty on Counts 3 and 5.

In the second proceeding, No. 429-179, the court finds the respondent, The Times-Mirror Company, guilty on both counts and imposes a fine of $100.00 as to each; finds Mr. Harry Chandler guilty on both counts and imposes a fine of $100.00 as to each count, with the same alternative of one [fols. 172-177] day in jail for each $2.00 of the fine remaining unpaid; finds Mr. Norman Chandler not guilty as to both counts and finds Mr. Hotchkiss not guilty as to Count 1, guilty as to Count 2, and imposes a fine of $50.00 as to that count, with the same alternative.

Mr. Luddy: Has your Honor made a ruling on the second cause, as to the Times-Mirror?

The Court: Yes, guilty as to both.

Mr. Cosgrove? Now, if the court please, might we have an exception noted to the ruling of the court on all counts in both cases?

The Court: Very well. The exception will be noted.

[fol. 178] "In the Superior Court of the State of California in and for the County of Los Angeles

No. 428920

Present Hon. Emmet H. Wilson, Judge

July 5, 1938.

In the Matter of The Times-Mirror Company et al., Respondents

Order Overruling Respondents' Objections etc.

Order to show cause in re contempt and demurrer to order to show cause come on for hearing; Cosgrove & O'Neil and F. B. Yoakum appearing as attorneys for the respondents; Allan W. Ashburn, Michael G. Luddy, Isaac Pacht and Arnold Praeger for the Bar Association; and Gallagher, Wirin & Johnson in amicus curiae. Tom Cecil, Reporter from 10:00 A. M. to 4:30 P. M. Respondents' motion that this proceeding be entitled "People of the State of California vs. The Times Mirror Company, a corporation, Harry Chandler, Norman Chandler and L. D. Hotchkiss, respondents in contempt" is denied. Respondents' motion that the Court direct that the District Attorney for the County of Los Angeles and the Attorney General for the State of California be notified of this proceeding, and for an Order directing that no other or further proceeding be had or taken herein until said District Attorney or said Attorney General shall appear herein as attorney for the prosecution of this proceeding is denied. Respondents' objections to any party other than the State of California prosecuting this proceeding, objection to any attorney appearing or acting or being permitted to appear or act as prosecuting attorney herein other than the Attorney General of the State of California or District Attorney of Los Angeles County are overruled. Respondents' objection to [fols. 179-181] the Los Angeles Bar Association or any committee of said Association or any one appearing or claiming to appear as attorney for said Association, or for any committee of said Association, appearing or acting or being permitted to appear or act as attorney or attorneys for the prosecution of this proceeding is overruled. Respondents' objection to any proceeding being taken herein

unless and until the People of the State of California are made a party hereto and appear herein by the proper officer of said State in that behalf duly authorized is overruled. Respondents' objection to the Los Angeles Bar Association or any committee of said Association or anyone appearing or claiming to appear as attorney for said association or for any committee of said association, controlling or directing, either as attorney of record or otherwise, this prosecution, is overruled. Respondents except. Matters are continued to July 6, 1938, at 2 P. M.

I certify the foregoing to be a full, true and correct copy of an order entered on the minutes of said Superior Court, Department 34, in the above entitled cause.

Attest my hand and the seal of the said Superior Court, this 11th day of July, 1938.

L. E. Lampton, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, by Elsie Possner, Deputy. (Seal.)"

[fol. 182] MINUTE ENTRIES OF ARGUMENT

"Wednesday, July 6, 1938. Department 34

Convened at 10:00 A. M., present: Hon. Emmet H. Wilson, Judge; J. E. Shaw, Deputy Clerk; C. W. Males, Deputy Sheriff; and the following proceedings were had:

428920

In the Matter of THE TIMES MIRROR COMPANY

Order to show cause in re contempt, demurrer to order to show cause and to affidavit of J. Lewis Elkins are resumed with all parties present as before. Tom Cecil, Reporter from 2:00 P. M. to 5:00 P. M. Argument is resumed and further hearing is continued to July 7, 1938, at 10:00 A. M.

* * * * * * *

The foregoing Minutes of Department 34 are correct.

J. E. Shaw, Deputy."

"Thursday, July 7, 1938. Department 34

Convened at 10:00 A. M., present: Hon. Emmet H. Wilson, Judge; J. E. Shaw, Deputy Clerk; C. W. Males, Deputy Sheriff; and the following proceedings were had:

[fol. 183] 428920

In the Matter of The Times Mirror Company

Order to show cause in re contempt, demurrer to order to show cause and to affidavit of J. Lewis Elkins are resumed for hearing with all parties present as before. Tom Cecil, Reporter from 10:15 A. M. to 4:45 P. M. Argument is resumed and further hearing is continued to July 8, 1938 at 11:00 A. M.

* * * * * * *

The foregoing Minutes of Department 34 are correct.
J. E. Shaw, Deputy."

[fol. 184] "Friday, July 8, 1938. Department 34

Convened at 10:00 A. M., present: Hon. Emmet H. Wilson, Judge; J. E. Shaw, Deputy Clerk; C. W. Males, Deputy Sheriff; and the following proceedings were had:

428920

In the Matter of The Times Mirror Company

Order to show cause in re contempt, and demurrer to order to show cause and to affidavit of J. Lewis Elkins are resumed for hearing with all parties present as before, and Carey McWilliams, Hubert Ganahl, Harry G. Balter and Lee Stanton in amicus curiae representing the National Lawyers Guild. Tom Cecil, Reporter from 11:00 A. M. to 5:00 P. M. Argument is resumed and continued to July 11, 1938 at 10:30 A. M.

* * * * * * *

The foregoing Minutes of Department 34 are correct.
J. E. Shaw, Deputy."

[fol. 185] "Monday, July 11, 1938. Department 34

Convened at 10:00 A. M., present: Hon. Emmet H. Wilson, Judge; J. E. Shaw, Deputy Clerk; C. W. Males, Deputy Sheriff; and the following proceedings were had:

* * * * * * *

428920

In the Matter of THE TIMES MIRROR COMPANY

Order to show cause in re contempt, and demurrer to order to show cause and to affidavit of J. Lewis Elkins are resumed for hearing with all parties present as before, except Carey McWilliams. E. R. Perry, Reporter from 10:30 A. M. to 5:00 P. M. Argument is resumed and continued to July 12, 1938, at 10:00 A. M.

* * * * * * *

The foregoing Minutes of Department 34 are correct.
J. E .Shaw, Deputy."

[fol. 186] "Tuesday, July 12, 1938. Department 34

Convened at 10:00 A. M., present: Hon. Emmet H. Wilson, Judge; J. E. Shaw, Deputy Clerk; C. W. Males, Deputy Sheriff; and the following proceedings were had:

* * * * * * *

428920

In the Matter of THE TIMES MIRROR COMPANY

Hearing is resumed with all parties present as before. Tom Cecil, Reporter from 10.00 A. M. to 4:30 P. M. Argument is resumed and continued to July 13, 1938, at 10:30 A. M.

* * * * * * *

The foregoing minutes of Department 34 are correct.
J. E. Shaw, Deputy."

"Wednesday, July 13, 1938. Department 34

Convened at 10:00 A. M., present: Hon. Emmet H. Wilson, Judge; J. E. Shaw, Deputy Clerk; C. W. Males, Deputy Sheriff; and the following proceedings were had:

* * * * * * *

428920

In the Matter of THE TIMES MIRROR COMPANY

Hearing is resumed with all parties present as before. Grover Summers, Reporter from 10:30 A. M. to 5:00 P. M. Argument is resumed and continued to July 14, 1938, at 10:00 A. M.

* * * * * * *

[fol. 187] The foregoing Minutes of Department 34 are correct.

J. E. Shaw, Deputy."

"Thursday, July 14, 1938. Department 34

Convened at 10:00 A. M., present: Hon. Emmet H. Wilson, Judge; J. E. Shaw, Deputy Clerk; C. W. Males, Deputy Sheriff; and the following proceedings were had:

* * * * * * *

428920

In the Matter of THE TIMES MIRROR COMPANY

Hearing is resumed with all parties present as before, except A. L. Wirin. Dave Little, Reporter, from 10:10 A. M. to 12:00 A. M. Argument is resumed. Matter is submitted.

* * * * * * *

The foregoing Minutes of Department 34 are correct.

J. E. Shaw, Deputy."

[fols. 188-189] "In the Superior Court of the State of California in and for the County of Los Angeles

Present Hon. Emmet H. Wilson, Judge

August 18, 1938.

No. 428920

In the Matter of The Times-Mirror Company, et al.

Order on Demurrer

Demurrer heretofore submitted is sustained without leave to amend as to Counts 2 and 4; overruled as to Counts 1, 3 and 5; 5 days allowed defendants to answer. The contempt proceedings are set for August 25, 1938, at 10 A. M. in Department 34.

I certify the foregoing to be a full, true and correct copy of an order entered on the minutes of said Superior Court, Department No. 34, in the above entitled cause.

Attest my hand and the seal of the said Superior Court, this 24th day of August, 1938.

L. E. Lampton, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles. By C. M. Baker, Deputy." (Seal.)

[fols. 190-191] "In the Superior Court of the State of California in and for the County of Los Angeles

Present Hon. Emmet H. Wilson, Judge

August 25, 1938.

No. 428920

In the Matter of The Times-Mirror Company, et al.

Judgment

Cause called for trial; Allan W. Ashburn, Michael G. Luddy, Isaac Pacht and Arnold Praeger appearing as attorneys for the Bar Association; Cosgrove & O'Neil for the respondents; Al Wirin in amicus curiae for the American

Civil Liberties Union. Pauline Ross, Reporter from 10:05 A. M. to 3:30 P. M. Ralph W. Trueblood is sworn and testifies for the petitioner. Horace E. Downing is sworn but does not testify. Petitioner's Exhibit No. 1 (Portion of the Times) is received and filed. Petitioner rests. Norman Chandler and L. D. Hotchkiss are sworn and testify for the respondent. Respondent rests. Cause is argued. The Times-Mirror Company is found guilty on Counts Nos. 1, 3 and 5 and is fined $100.00 each on Counts 1 and 2, $300.00 on Count 3. Harry Chandler and Norman Chandler are found not guilty. L. D. Hotchkiss is found guilty on count 1 and is fined $100.00; in lieu of payment thereof to serve one day in the County Jail for each $2.00 of the unpaid balance; respondent excepts. 30-day stay of execution is granted. L. D. Hotchkiss is found not guilty on Counts Nos. 3 and 5.

I certify the foregoing to be a full, true and correct copy of an order entered on the minutes of said Superior Court, Department No. 34, in the above entitled cause.

Attest my hand and the seal of the said Superior Court, this 26th day of August, 1938.

L. E. Lampton, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles. By Elsie Possner, Deputy. (Seal.)"

[fol. 192] 7. The opinion hereinafter set forth is a full and correct copy of the opinion rendered by the trial court in the proceedings herein under review:

"In the Superior Court of the State of California in and for the County of Los Angeles

No. 428920 and No. 429179

In the Matter of The Times-Mirror Company, a Corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, Respondents, In Contempt

Opinion

For Los Angeles Bar Association, Allen W. Ashburn, Michael G. Luddy, Isaac Pacht, and Arnold Praeger.

For Respondents, Cosgrove & O'Neil, T. B. Cosgrove, and F. B. Yoakum, Jr.

Amicus curiae for American Civil Liberties Union, A. L. Wiring.

The respondents are charged, in two separate proceedings, by a committee of the Los Angeles Bar Association, through an affidavit of J. Louis Elkins, Executive Secretary of the Association, with contempt of court, in that they are alleged to have published editorials in the Los Angeles Times concerning actions pending in this court and undetermined at the time the publications were made, which editorials were intended by respondents and were in and of themselves calculated and had an inherent tendency to in- [fol. 193] terfere with, influence, sway, and control the proceedings and interfere with, sway, control, embarrass, and influence the actions and decisions of the judges before whom the respective actions were pending in connection with rulings or orders to be made subsequently to the date of the publication of the respective editorials.

The affidavit in No. 428920, hereinafter referred to as the first proceeding, contains five counts, each count setting up a separate article or editorial published in the Los Angeles Times. The affidavit in No. 429179, referred to hereinafter as the second proceeding, contains two counts, each based upon a different editorial published in the same newspaper concerning the first proceeding within a few days after the citation for contempt was issued therein.

The respondents have demurred in each proceeding to the order to show cause and to the affidavit upon which the same was based, all of them relying upon the constitutional guaranty of freedom of the press, and the individual respondents raising the additional point that the affidavits are fatally defective in that there is no allegation that they personally caused or personally permitted the publication of the editorials set forth in the two affidavits.

As to the individual respondents, it is alleged that the respondent, The Times-Mirror Company, at all times mentioned in the affidavits was the publisher of the Los Angeles Times, a daily newspaper printed, published and circulated in the city of Los Angeles; that the respondent, Harry Chandler, is and was the president and the respondent, Norman Chandler, the General Manager of the said The Times-Mirror Company, and that the respondent, L. D.

Hotchkiss, is and was the managing editor of the said Los [fol. 194] Angeles Times. The allegation as to publication is the same in each count of each proceeding: that on and before the date of publication there was pending and undetermined and known to the respondents and each of them to be pending and undetermined in this court a certain action (giving title and number); that on the date of publication "the respondents, The Times-Mirror Company, a corporation, Harry Chandler, Norman Chandler, and L. D. Hotchkiss, and each of them, caused to be printed and published and circulated in the city of Los Angeles and elsewhere an issue of said Los Angeles Times; that in said issue of said Los Angeles Times, there was printed and published a certain editorial" (giving title and text verbatim).

In the case of Otis v. Superior Court, 148 Cal. 129, 82 Pac. 853, a judgment of contempt was annulled upon the ground that the affidavit upon which the petitioners Otis and Chandler were cited did not connect them with the publication either by direct averment that they were the publishers or by any statement of fact leading to that conclusion. The affidavit alleged that H. G. Otis was the president and general manager of The Times-Mirror Company, the publisher and printer and of the newspaper, and that Harry Chandler was the vice-president and assistant general manager of the said company. There was no allegation that they published or caused to be published the offending articles or the newspaper in which they appeared. The court said: "To make the petitioners liable in contempt for matter appearing in the Times, it was necessary to show, and therefore essential to charge, that they personally caused, or, being in control, at least permitted, the publication of the articles in question". The affidavits in these proceed- [fol. 195] ings expressly charge that the respondents and each of them caused to be printed and published and circulated an issue of the Los Angeles Times and that in said issue there were printed and published the articles concerning which complaint is made.

The allegation that the individual respondents caused the newspaper, the entire paper, to be printed and published and that the editorials in question were printed and published in the said newspaper is a sufficient charge that they caused each separate article and editorial therein to be printed and published.

The respondents all claim immunity by reason of section 9 of Article I of the Constitution of California and the First and Fourteenth Amendments to the Constitution of the United States which guarantee freedom of speech and of the press.

Freedom of the press and freedom of speech, which are safeguarded by the First Amendment against federal action, are among the fundamental personal rights and liberties of citizens that are protected by the due process clause of the Fourteenth Amendment from invasion, impairment, or abridgement by state action. (Lovell v. City of Griffin, (U. S.) 82 L. Ed. Ad. Op. 660, 58 S. Ct. Adv. Op. 666; Gitlow v. New York, 268 U. S. 652, 666, 69 L. Ed. 1138, 45 S. Ct. 625; Near v. Minnesota, 283 U. S. 697, 707, 75 L. Ed. 1357, 51 S. Ct. 625; Grosjean v. American Press Co., 297 U. S. 233, 244, 80 L. Ed. 660, 56 S. Ct. 444; De Jonge v. Oregon, 299 U. S. 353, 364, 81 L. Ed. 278, 57 S. Ct. 255; Stromberg v. California, 283 U. S. 359, 368, 75 L. Ed. 1117, 51 S. Ct. 532, 73 A. L. R. 1484. Compare Fiske v. Kansas, 274 U. S. 380, 71 L. Ed. 1108, 47 S. Ct. 655, and Whitney v. California, 274 U. S. 357, 71 L. Ed. 1095, 47 S. Ct. 641.)

[fol. 196] But these rights, protected though they are by both federal and state constitutions, do not confer an absolute right to speak and to publish without any responsibility, whatever one may choose to say or to print, or an unrestricted and unbridled license, nor do they give immunity for every possible use of language or prevent the punishment of those who abuse these rights. Reasonably limited this freedom is an inestimable privilege in a free government, but without limitation it might become a scourge to state or nation. (Gitlow v. New York, supra; Whitney v. California, supra; Stromberg v. California, supra.)

The right of the press is unquestioned to publish matters and happenings of a public nature and to discuss and comment fairly upon them, but that right, as is every other right enjoyed in human society, is subject to the restraints which separate right from wrongdoing. Freedom of the press does not imply the right to frustrate and defeat the discharge of those governmental duties upon the performance of which the freedom of all, including the press, depends. (Toledo Newspaper Co. v. United States, 247 U. S. 402, 62 L. Ed. 1186, 38 S. Ct. 560.) It is important to the public that the press should be restricted as little as possible, but it is

equally important that the due administration of justice should not be interfered with by newspaper comments which have a tendency to bias or influence the court in favor of one party or the other.

The freedom of the press vouchsafed by the Constitution implies the publisher's respect for the equal rights of others. One of those rights that the publisher is bound to respect is a litigant's privilege of appearing before an independent, imparital court for judicial redress, uninfluenced and [fol. 197] unembarrassed by partisan publications concerning pending litigation. Under the constitution this right is as sacred as the freedom of the press. By both state and Federal constitutions government is composed of distinct legislative, executive and judicial departments of equal rank. The judiciary is an independent tribunal to which the individual may resort whenever his property rights are invaded by private wrongdoers, by public agencies, or by the legislative or the executive department. In controversies over rights guaranteed by the constitution the individual stands before the court on an equality with government itself. The constitutional provision creating an independent juridicary is recognized by historians, philosophers, and statesmen as a vast contribution to the science of government. To preserve the purity, the impartiality, and the independence of the court is a solemn duty that cannot be evaded without endangering all constitutional rights, the freedom of the press with the others. (State v. Lovell, 117 Neb. 710, 222 N. W. 625.)

The aegis of free speech has never been sufficiently broad to cover license. The freedom that is guaranteed by the constitution freely to write and to publish upon all subjects is qualified by the provision that imposes responsibility for the abuse of that freedom. License is not to be mistaken for liberty. Neither under the alluring guise of a plea for the freedom of the press nor behind a screen of emotive phrases may a publisher escape responsibility for his acts. The powerful influence of the press in the affairs of modern civilization is recognized and extolled by all thinking people, but when it clearly appears that an attempt is made to use that potent agency to nullify a lawful exercise of the func- [fol. 198] tions of the judiciary, as those functions relate to a cause then presently pending and undetermined, the hand of punitive justice may properly be applied. (Bee Publishing Co. v. State, 107 Neb. 74, 185 N. W. 339.) Liberty of

the press is subordinate to the independence of the judiciary, and it is not expedient that any class in the community should be privileged to interfere with the rights of litigants or to embarrass or obstruct the administration of justice. (In re Independent Publishing Co., 240 Fed. 849, 862.) Freedom of speech and of the press does not include the abuse of the power of tongue or pen, any more than freedom of other action includes an injurious use of one's occupation, business or property. (State v. McKee, 73 Conn. 18, 46 Atl. 409, 84 Am. St. Rep. 124, 49 L. R. A. 542.)

Anyone who loves his country, its liberty, and its institutions, and who esteems the protection which the constitution affords, cannot avoid an emotion of alarm at the persistent attempt, by regulation and by prohibition, to curtail personal rights and privileges that heretofore have been considered sacred and secure.

By reason of the continual flow of propaganda on the one hand and of the effort to restrain and to censor publication on the other, the necessity for a free and untrammeled press and for a full discussion of public matters of every kind is more important today than in any previous period in the history of the nation. Nevertheless the right of freedom of publication and freedom of speech is not an unlimited and unrestrained right and does not license the publication of criticism and comment at such times or in such manner as to obstruct or to contaminate the pure stream of justice.

[fol. 199] Fair comment and even criticism, both of a judgment rendered by the court and of the reasoning leading to a judgment, may be indulged in and no court or judge ought to object to impartial and just comment. But while an action is pending and undetermined and as long as there remains before the court any matter to be decided in a case, there can be no criticism or comment, either favorable or unfavorable, that will be likely to have a tendency to influence the court. The right freely to comment and criticize the actions, opinions, and judgments of courts is of primary importance to the public generally. It is not only good for the public but has a salutary effect on the judges as well. Courts and judges are not and should not be above criticism and as long as they are not impeded in the conduct of judicial business by publications having the direct tendency and effect of obstructing the enforcement of their orders and judgments or of impairing the justice and im-

partiality of verdicts, there can be no resort to contempt proceedings against the publisher. There is no question as to the right to criticize and censure the conduct of courts and parties when causes have been finally decided. Publishers of newspapers have the right, but no higher right than others, to bring to public notice the conduct of courts and parties, whether upright or blameworthy, after the decision has been made, if the publications are true and fair in spirit. (Sturoc's Case, 48 N. H. 428, 97 Am. Dec. 626.) If the published criticisms of the court or judge are for past actions and orders, and if the matter with which the criticism has to do has been finally adjudicated and the proceedings are ended so that the carrying out of the court's judgment cannot be obstructed, the publications are not contemptuous. (Nixon v. State, 207 Ind. 426, 193 N. E. 591, 97 A. L. R. 894.) [fol. 200] An address to the public is an address to the court. When articles calculated to interfere with the fair trial of a cause, and thus to obstruct justice, are so published and circulated, it is not necessary, in order to constitute them contempts, that they actually reach the eyes of the court or jury. (In re Lindsley, 75 Cal. App. 122, 241 Pac. 934; State v. Howell, 80 Conn. 668, 672, 69 Atl. 1057, 125 Am. St. Rep. 141; Telegram Newspaper Co. v. Commonwealth, 172 Mass. 294, 52 N. E. 445, 70 Am. St. Rep. 280, 44 L. R. A. 159; People v. Wilson, 64 Ill. 195, 16 Am. Rep. 528.) And it is not essential in order to constitute contempt to show that the actions of the court or of the judge were actually influenced by the utterances of the petitioner. (In re Shuler, 210 Cal. 377, 404, 292 Pac. 481.) In the case of In re Shortridge, 99 Cal. 526, 34 Pac. 227, 37 Am. St. Rep. 78, 21 L. R. A. 755, the Supreme Court said: "Liberty of the press must not be confounded with mere license. Liberty of the press stops where a further exercise would invade the rights of others. This provision of the constitution does not authorize a usurpation of the functions of the courts. Under the plea of the liberty of the press a newspaper has no right to assail litigants during the progress of a trial, intimidate witnesses, dictate verdicts or judgments, or spread before juries its opinion of the merits of cases which are on trial. As stated before, what may be spoken may be written, and the converse of the proposition is true that what may not be spoken under such circumstances may not be written."

Not the influence upon the mind of the particular judge is the criterion, but the reasonable tendency of the acts done to influence or to bring about the baleful result is the test. (Sinclair v. United States, 279 U. S. 749, 764, 73 L. Ed. [fol. 201] 938, 49 S. Ct. 471, 63 A. L. R. 1258; Toledo Newspaper Co. v. United States, supra.) Liberty of the press as guaranteed by the constitution does not permit publications respecting pending causes which are reasonably calculated to interfere with the due administration of justice. It is contempt to issue publications which are calculated to prejudice or prevent fair and impartial action in a cause then pending. (In re Lindsley, supra.) The publication of any article, either true or false, concerning a pending cause, that tends to impede the orderly administration of justice in that cause constitutes a contempt. (In re San Francisco Chronicle, 1 Cal. (2d) 630, 36 Pac. (2d) 369.) Constitutional guaranties of freedom of speech and of the press do not go so far as to protect the citizen in making such comment by either spoken or printed utterance with respect to causes pending before courts of justice as have for their purpose and manifest tendency an attempted interference with the orderly administration of justice before such tribunals and in respect to causes pending and in course of conduct therein. (In re Shuler, supra.) If an article is calculated to embarrass or to influence a court or to prevent a fair trial between suitors in court, either by disturbing the independent verdict of the jury or the independent and unbiased conclusion of the court, it is a contempt. (State v. Tugwell, 19 Wash. 238, 52 Pac. 1056, 43 L. R. A. 717.)

The essence of the offense is conduct reasonably calculated to produce an atmosphere of prejudice where a pending case is to be tried. (King v. Tibbits, 2 Br. Rul. Cas. 469.) The matter charged must have a reasonable tendency to [fol. 202] cause substantial prejudice to a party in the conduct of the action or substantially to interfere with the due administration of justice. (Hunt v. Clarke, 58 L. J. (Q. B.) 490.) The publication of an article in a newspaper printed and circulated in the place where a court is sitting, reflecting in severe terms upon the character of a criminal prosecution in court, if made at a time and in circumstances such as would naturally bring it to the notice of jurors and others who are in attendance on the court, is a contempt of court. (Sturoc's Case, supra.)

It makes no difference, in its effect upon the public, whether an article reflecting upon the court in a cause on trial, and improperly commenting upon the evidence, and disparaging the cause of one or the other of the parties, and calculated to prevent a fair trial, is published with criminal intent or with good intent. It brings contempt upon the court in the public mind, and is a contempt of court in either case. The absence of improper intent is to be considered in mitigation of the offense but not as an excuse for it. (State v. Howell, supra.)

The authorities are almost unanimous that any act or conduct or publication calculated to intimidate, influence, impede, embarrass, or obstruct courts in the due administration of justice in matters pending before them constitutes a contempt of court, and that any willful act or conduct or any publication which has a reasonable tendency to prevent a fair trial, or to influence or embarrass the judge, or to prejudice the public or the jurors against an accused person for an offense, or which tends to prejudice the rights of [fol. 203] either party to a civil action, may be punished as for contempt of court. (Lindsley v. Superior Court, 76 Cal. App. 419, 245 Pac. 212; State v. New Mexican Printing Co., 25 N. Mex. 102, 177 Pac. 751; Herald-Republican Pub. Co. v. Lewis, 42 Utah 188, 129 Pac. 624; 2 Bishop on Criminal Law (7th Ed.), sec. 259; State v. Circuit Court, 97 Wis. 1, 72 N. W. 193, 38 L. R. A. 554, 65 Am. St. Rep. 90; Cheadle v. State, 110 Ind. 301, 309, 11 N. E. 426, 59 Am. Rep. 199.) The question is not what effect the article did have but what effect it might have had.

There is no dissension in the cases that it is an inherent right and power of the courts to punish for contempt publishers of newspapers who, pending the trial of a case, print matter for public circulation which is calculated to impede, embarrass, or affect the orderly trial and disposition of the case being heard. The reason why such publication is treated as contempt of court is because the tendency, and sometimes the object, is to deprive the court of the power of doing that which is the end for which it exists,—namely, to administer justice fully, impartially, and with reference solely to the facts judicially brought before it. (Tate v. State, 132 Tenn. 131, 177 S. W. 69.)

In the case of Patterson v. Colorado, 205 U. S. 454, 462, 51 L. Ed. 879, 27 S. Ct. 556, 10 Ann. Cas. 689, Mr. Justice Holmes, writing the opinion of the court, said that the

theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open Court, and not by any outside influence, whether of private talk or public print, and what is true with reference to a jury is true also with reference to a court. If a court regards, as it may, a publication concerning a [fol. 204] matter of law pending before it as tending toward interference with the administration of the law, it may punish the offender. When a case is finished the courts are subject to the same criticism as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument, or intimidation hardly can be denied.

It is of no importance that a publication calculated to produce resistance to an order of court, which was in form and substance well adapted to influence a weak judge through fear of public abuse and ridicule, produced in the judge's mind irritation instead of fear. (Toledo Newspaper Co. v. United States, (C. C. A.) 237 Fed. 986.) On certiorari of this case the Supreme Court said that the situation is controlled by the reasonable tendencies of the acts done; that it is not necessary that there be proof that the mind of the judge was influenced or his purpose to do his duty obstructed or restrained by the publication; that having regard to the protection of society, to the honest and fair administration of justice, and to the evil to come from its obstruction, the wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of how far they may have been without influence in the particular case. (Toledo Newspaper Co. v. United States, 247 U. S. 402, 62 L. Ed. 1186, 38 S. Ct. 560.) Language in the dissenting opinion of Justice Holmes was emphasized by respondents' counsel and by amicus curiae, but no case has been found wherein a majority of the Supreme Court have agreed with the dissent.

The judicial department of the government is not on a parity with its coordinate branches. The legislator and the executive may receive petitions and advice from their constituents, they may express their opinions upon any subject [fol. 205] at any time, yet they are not disqualified from acting. This freedom is forbidden ground to the judge. To learn any facts concerning a case, to discuss its merits, to hear any argument except in open court, or to express an opinion before hearing the evidence, is to disqualify him.

Neither may he go upon the public rostrum, give interviews to the newspapers, or circularize the public, in explanation or in defense of his judicial acts. The reason for his decisions must appear from the decisions themselves.

The so-called "clear and present danger" doctrine, it is argued, precludes the conviction of anyone for contempt of court unless there is an immediate danger that his utterances will have some ulterior effect upon the court or its judgment, or upon the government. This doctrine has been discussed in criminal cases but never with reference to contempt, as far as the court is advised.

In affirming a judgment of conviction of conspiracy to violate the Espionage Act and to use the mails for the transmission of unmailable matter, in Schenck v. United States, 249 U. S. 47, 63 L. Ed. 470, 39 S. Ct. 247, Mr. Justice Holmes, writing the unanimous opinion of the court, used this language: "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." The statement appears to be outside the issues of the case, inasmuch as the defendants had been convicted and the conviction was therein being sustained by a unanimous court. In a dissenting opinion in Abrams v. United States, 250 U. S. 616, 630, 63 L. Ed. 1173, 40 S. Ct. 17, Justices Holmes and Brandeis said that we should be [fol. 206] eternally vigilant against attempts to check the expression of opinions "unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." And in another dissenting opinion in Gitlow v. New York, 268 U. S. 652, 69 L. Ed. 1138, 45 S. Ct. 625, the same justices restated the above quotation from Schenck v. United States and added, among other things, that "Whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration. If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way." Again these Justices joined in a concurring opinion in Whitney v. California, 274 U. S. 357, 373, 71 L. Ed. 1095, 47 S. Ct. 641, in which they said: "Although the rights of free

speech and assemblage are fundamental, they are not in their nature absolute. Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the state from destruction or from serious injury, political, economic, or moral. That the necessity which is essential to a valid restriction does not exist unless speech would produce, or is intended to produce, a clear and imminent danger of some substantive evil which the state constitutionally may seek to prevent has been settled." Lastly, in Herndon v. Lowry, 301 U. S. 242, 81 L. Ed. 1066, 57 S. Ct. 732, in reversing a conviction under a Georgia statute which was held not to furnish a sufficiently ascertainable standard of guilt, the court, in connection with the discussion of previous cases arising under the Espionage Act in which the court had said that interference with the [fol. 207] operations of the government might be inferred from the time, place, and circumstances of the act, used the above-quoted language from the Schenck case.

In so far as appears from the arguments made in the instant case, the "clear and present danger" theory has as yet pervaded our jurisprudence no further than as indicated by the decisions and dissents above cited in criminal prosecutions under the Espionage Act and similar statutes. No case has been cited in which it has been mentioned in a contempt proceeding.

The application of this doctrine to contempt proceedings would mean that an unsuccessful attempt to influence the court would not be punishable, that only the one who prevailed in his effort would be in contempt. It would also mean that one contempt, or possibly two or more, would of necessity be passed by as unimportant, that the court could act only after so many contempts had been committed that the courts and the government would have been undermined, by which time there would have been so great a popular uprising as to change the form of government, whereupon there would be no courts and therefore no contempt. Reductio ad absurdum.

Respondents have cited and laid much stress upon the case entitled State v. American-News Co., 64 S. Dak. 385, 266 N. W. 827. This decision is not in harmony with the prevailing and practically unanimous rule. In one article published shortly before sentence was to be pronounced against a defendant who had pleaded guilty the court was

told how to mitigate the sentence; it was told that any citizen "falling for" the salesmanship of the defendant's attorney might "live to fill the air with their vain regrets"; it was told that the defendants in other pending fraud cases should learn that "the public is to be no longer fooled," etc. How can this language be construed otherwise than [fol. 208] as a threat against the judge and against his future in public life? But the court said that although the article "took occasion to some extent to advise and inform the judge as to his duties" it nevertheless did not constitute a contempt. The making of such a statement publicly would be held in contempt in almost any other jurisdiction. Another article purporting to be an account of the proceedings when sentence was pronounced was also held not to be contemptuous because there was nothing more to be done by the court after sentence, although the article "was not a fair and impartial report of the proceedings, but was incomplete and misleading," it berated and ridiculed the judge, "was inaccurate and unfair," "passed definitely beyond the bounds of fair and decent comment and criticism," "without justification imputed incompetence and bad motives" to the judge. As to other articles which the defendants pleaded were published after having been advised by competent and reputable counsel that they did not constitute contempt, the court held that the articles were not contemptuous but at the same time declared that if the defendants had consulted an attorney they could not have retained an honest belief in the propriety of the articles, and that if any member of the bar had advised or counseled the publication he did so "in utter disregard of the ethics of his profession and in flagrant violation of his oath as an attorney." It has not been possible for me to reconcile the act of the court in giving complete absolution to the defendants by reason of the court's conclusion that the articles were not contemptuous with its upbraiding of the attorney and its reprobation of his advice to the same effect. Throughout the opinion in the American-News Company case the court [fol 209] treated the matter solely as a controversy between the court and the newspaper. Not once was consideration given to the importance to the defendant of having a fair hearing in an atmosphere uncorrupted by threats or criticism from extra-mural sources, or to the like importance to the public of feeling that its courts could be protected from such assaults.

It is frequently said that "the battles for a free press are a part of the march of democracy" and again that "as the people became enfranchised the press has been made free." Unaided the newspapers could not have preserved their freedom. The constitutional guaranty of freedom of speech and of publication would now be but a vacuous phrase if the courts had supinely permitted the enforcement of attempted legislative and executive restrictions. The courts have stood fast against all attempts to curtail personal rights and liberties, in many instances in the face of bitter and vituperative criticism and abuse not only from other officials but from the newspapers that must find protection for themselves in unbiased and untrammeled judges. If the courts are not permitted to try cases and render judgments impartially and without pressure either from newspapers, individuals, or groups of individuals, freedom of speech and freedom of publication will soon pass into oblivion. If a newspaper may suggest how a case should be determined, any person or group has the same right to suggest its ideas to the judge. Lawsuits would then be decided, not according to the weight of the evidence, but according to the weight of the influence brought to bear upon the judge, and the newspaper itself would be the victim if it had less influence than the opposing group. Chief Justice Hughes, who has been the author of many opinions sustain-[fol. 210] ing civil liberties, after making reference to the argument that the liberty of the press might be rendered a mockery and a delusion if public authorities were permitted to punish for harmless publications, said: "But it is recognized that punishment for the abuse of the liberty accorded to the press is essential to the protection of the public. * * * There is also the conceded authority of courts to punish for contempts when publications directly tend to prevent the proper discharge of judicial functions." (Near v. Minnesota, supra.)

It is the right of the government to protect itself from destruction. It is no less the right and the duty of the courts to protect the judicial branch of the government from influences that render it impotent, for without the courts democracy would not survive.

While there are further judicial acts to be performed the action is pending. The court is not prepared to say that a mere technical pendency of an action would bar criticism of or comment upon an order made by the court. But if the

action is still pending to the extent that other and further orders of the court may be required before the final determination of the action, the doing of which may be embarrassed or influenced, then the comment or criticism would be deemed to impede or obstruct justice and would be contemptuous. In a civil case the verdict of the jury or the rendition of a judgment by the judge does not terminate the case. A motion for new trial and other motions provided by law may be made and if made must be ruled upon by the judge. In a criminal case, in the event of a verdict of conviction, the defendant may make a motion for new trial and if denied he may make application for probation. A case [fol. 211] is pending until all such matters are decided by the court. If a motion for new trial should be granted the case would still pend awaiting a second trial.

Pendency of an action has been held to go even further. A case has been held to be pending on appeal after the filing of the decision and until the expiration of the period allowed for filing a petition for rehearing. (In re Nelson, 103 Mont. 43, 60 Pac. (2d) 365.) If such petition is filed, the action is pending until the denial of the same by the court, (McDougall v. Sheridan, 23 Idaho 191, 128 Pac. 954) or until final judgment is rendered and until remittitur is issued. (State v. Tugwell, 19 Wash. 238, 52 Pac. 1056, 43 L. R. A. 717.) A case is pending while it is still open to modification, rehearing, or appeal. (In re Chadwick, 109 Mich. 588, 67 N. W. 1071.)

It now becomes necessary to examine each editorial for the purpose of determining whether it so transgresses the principles laid down in the cited cases as to require the respondents to be placed on trial. Each of the cases upon which the editorials commented was pending in the Superior Court in and for Los Angeles County at the time of the publication of the editorial relating thereto.

Count 1 of the first proceeding relates to an editorial entitled "Sit-Strikers Convicted." It is alleged that the trial of the case of People v. William Busick, et al. had resulted in a verdict of guilty on December 20, 1937, and that the judge who presided at the trial fixed December 22d as the date for pronouncing sentence upon the defendants. The editorial was published on December 21st, the day intermediate the verdict and the date set for sentence. The editorial, among other things, said: "The verdict means

[fol. 212] that Los Angeles is still Los Angeles, that the city is aroused to the danger of davebeckism, and that no kind of union terroism will be permitted here. * * * If Beck can be convinced that this kind of warfare is not permitted in this area he will necessarily abandon his dreams of conquest. * * * For the first time since the present cycle of labor disturbances began, union lawlessness has been treated as exactly what it is, an offense against the public peace punishable like any other crime. * * * Government may have broken down in other localities; whole states may have yielded to anarchy. But Los Angeles County stands firm; it has officers who can do their duty and courts and juries which can function. So long as that is the case, davebeckism cannot and will not get control here; nor johnlewisism either."

The defendants in the criminal action were entitled, after the verdict to make a motion for a new trial and, if made, it was incumbent upon the trial judge to grant or deny it. If granted, the action would still be pending and if tried a second time prospective jurors no doubt would have been influenced by the editorial. If the motion were denied the defendants could apply for probation and the trial judge would then be called upon to grant probation or to impose sentence. It is alleged that the defendants were charged with conspiracy to violate Section 418 of the Penal Code, which declares that a person using force or violence in entering upon or detaining lands of another is guilty of a misdemeanor, and also to violate Section 594 of the Penal Code, which provides that every person maliciously injuring or destroying real or personal property not his own is guilty of a misdemeanor. The substantive offenses referred to in these sections of the Penal Code are misdemeanors, but the affidavit in this proceeding alleges that the defend- [fol. 213] ants were charged with a felony, to wit: conspiracy to violate the said sections. Whether conspiracy to commit a misdemeanor is a misdemeanor or a felony is contingent upon the sentence pronounced by the trial judge. (Penal Code, sec. 182.) After the publication of the editorial, these duties rested upon the trial judge: (1) to rule upon a motion for new trial, if made, and in so doing to determine whether error had been committed during the trial and also whether, in his judgment, there was sufficient evidence to warrant a verdict of guilty, and if not, to set aside the verdict; (2) if the motion for new trial should be

denied, then to act upon an application for probation, if filed; (3) if probation should be denied, then to determine by his sentence whether or not the defendants should be made felons or should suffer a minor penalty.

Considered according to the principles of the cases cited, the editorial was calculated and would have a reasonable tendency to influence the judge in his determination of these matters. It praised the verdict, warned that the defendants and their associates were not wanted in Los Angeles and would not be here as long as the courts were functioning. The language of the editorial as a whole was a suggestion to the court that no leniency be shown to the defendants. What would be expected, after reading the article, except condemnation of the judge if he deemed it legally necessary to grant a new trial or if he granted probation?

Count 2 sets forth an editorial entitled "The Wright Verdict". It is alleged that in the case of People v. Paul A. Wright the defendant was charged in two counts with murder, a felony; that he pleaded not guilty and not guilty by reason of insanity to both counts; that on February 12, 1938, the defendant was found guilty of manslaughter on [fol. 214] each count and on the same day the trial judge set February 14th as the date for trying the issues raised by the plea of not guilty by reason of insanity; that on February 13th the editorial in question was published. After stating that there would be little public disposition to criticize the verdict, even though it might be difficult to reconcile it with the evidence, the editorial made reference to Wright's evidence "with which he smeared the memories of his dead wife and his dead friend", referred to the "unwritten law" as "a form of social anarchy", and continued: "It is, of course, conceivable that the sight, if he saw it, may have so upset him mentally as to make his subsequent act less than outright murder. * * * Unfortunately for the public, this verdict does not end the nauseating case. Aside from appeal, Wright has another chance to escape the consequences of his act under the weird California law which enables him to say to the State: 'I didn't do it, but if I did I was crazy at the time and so ought not to be punished anyway.' Such is the effect of the contradictory but perfectly legal plea of not guilty and not guilty by reason of insanity. There is at least some consolation in the fact that the worst is over. Twice-dished dirt has little public interest."

After the publication of this editorial the trial on the plea of not guilty by reason of insanity was to be held. If the defendant had been found sane the usual motion for new trial no doubt would have been made, and if insane, then the procedure provided by law would have followed. The case was pending and undetermined on the date of the publication.

The editorial admitted the legality of the plea of not guilty by reason of insanity and criticized the law which permits the plea, a criticism which the court takes judicial [fol. 215] notice is shared by many citizens, lawyers and laymen alike. The writer did not criticize the jury, the court, or the verdict. There was no suggestion as to what subsequent action should be taken by the jury or by the court and no attempt to influence the jury or the judge. The reference to the "unwritten law" was of no consequence as the jury had already made its finding upon every defense except that of insanity. When there is a reasonable doubt as to whether a person has been guilty of contempt of court he should be given the benefit of the doubt. Nevertheless all comment would better have been postponed until after final disposition had been made of the case.

In Count 3 the editorial referred to is entitled "The Fall of an Ex-Queen". This editorial referred to the action entitled People v. Erwin P. Werner and Helen M. Werner, in which it is alleged that the two defendants were charged with attempted grand theft and violating Section 653f of the Penal Code, which provides that every person soliciting another to offer or accept or join in the offer or acceptance of a bribe, or to commit other named offenses, is punishable by imprisonment in the county jail for not longer than one year or in the state prison for not longer than five years or by a fine of not more than $5,000. A verdict of guilty on both counts was returned by the jury on April 12, 1938. On the same day each of the defendants gave notice of motion for a new trial and the judge fixed April 22d as the date for passing upon the said motions. On April 14th the editorial in question appeared in the Los Angeles Times in which reference was made to "boss-ship" in politics as "a denial of public rights" and that it "necessarily implies [fol. 216] a kind of moral obliquity if not an actually illegal one". The past political activities of the defendant, Mrs. Helen Werner, are mentioned and the editorial then stated

that "She would have been miscast in any other sphere of activity", and that in later life "She found her grip slipping and it was hard to take". It continued: "The several cases which in recent years have brought her before the courts to defend her activities seem all examples of an energetic effort to regain and reassert her onetime influence in high places. That it should ultimately have landed her behind the bars as a convicted bribe-seeker is not illogical. But if there is logic in it, the money meant less to Mrs. Werner than the name of still being a political power, one who could do things with public officials that others could not do. To herself at least she was still Queen Helen."

Here again, as in the case of the "Sit-Strikers", the verdict of the jury did not end the case, as there were yet several matters to be passed upon by the judge. A motion for new trial had been made before the editorial was published and the time for hearing the same was set for a subsequent date. If the motion had been denied, the defendants had a right to make application for probation upon which the court was required to rule, and if probation were denied, the court by its sentence of the defendants to the state prison or to the county jail would determine whether they were felons or misdemeanants.

It does not appear from the affidavit in these proceedings that either the past political activities of Mrs. Werner to which the editorial referred or the cases which had "brought her before the court to defend her activities" [fol. 217] were involved in the then pending criminal case. Discussion at such time of extraneous matters of that character is, in my opinion, within the category of prohibited comment.

It is alleged in Count 4 that on April 11, 1938, an action entitled John L. "Jackie" Coogan v. Arthur L. Bernstein, et al. was commenced in which the plaintiff sought to recover from his mother and his stepfather an accounting of money alleged to have been earned by the plaintiff as a motion picture actor while a minor, and that upon the commencement of the action an order appointing a receiver and a restraining order were issued and served upon the defendants; that on April 16th an editorial was published entitled "Jackie's Millions", which referred to the Cali-

fornia statute under which a child's earnings belong to its parents, and stated that when the statute was passed it could not have been foreseen that a minor could earn large sums of money, and that the fact that he should have "no right to a penny of these earnings and no more voice in their disposal than a trained dog seems almost as fantastic as the earnings themselves". Reference is made to the life of a juvenile film prodigy as not being an enviable one, cast in an unnatural and artificial setting, devoid of many of the natural pleasures and companionships of childhood, and closes as follows: "That they should be allowed some compensation for these sacrifices for use when their few years of fleeting fame are over seems only fair. At least it will seem so to the millions to whom the wistful waif who was Jackie Coogan in 'The Kid' gave pleasure".

It does not seem possible that this editorial could influence the mind of any judge who should hear the case. It does not indicate how the writer of the editorial thought the case should be decided, and does not attempt to influence [fol. 218] or sway the court in the slightest degree. It is merely a statement of the law as set forth in Section 197 of the Civil Code and an expression of sympathy for minors who have earned large sums of money at a sacrifice of the joys of childhood and who have none of their earnings when they reach majority. All that the court may do in this action is to apply the law as written and as affected by evidence that may be introduced at the trial, if any, tending to show that the parents had in some manner waived the provisions of the statute or had made or agreed to make a gift of the minor's earnings to him, or had in some manner established a right in his favor which was not created by the law. The editorial does not go farther than to express an earnest wish that the statute might be different.

Count 5 sets up an editorial entitled "Probation for Gorillas?", relating to an action entitled People v. Matthew Shannon and Kennon Holmes, who, it is alleged, were charged with two counts, conspiracy to commit an assault with a deadly weapon, and the assault itself. A verdict of guilty was rendered on April 22, 1938. The defendants made application for probation and on May 2d the trial judge set June 7th as the date for passing upon the application for probation and for the pronouncement of sentence.

On May 5th the editorial appeared in the Los Angeles Times, reading as follows:

"Two members of Dave Beck's wrecking crew, entertainment committee, goon squad or gorillas, having been convicted in Superior Court of assaulting nonunion truck drivers, have asked for probation. Presumably they will say they are 'first offenders', or plead that they were merely indulging in playful exuberance when, with slingshots, they [fol. 219] fired steel missiles at men whose only offense was wishing to work for a living without paying tribute to the erstwhile boss of Seattle.

"Sluggers for pay, like murderers for profit, are in a slightly different category from ordinary criminals. Men who commit mayhem for wages are not merely violators of the peace and dignity of the State; they are also conspirators against it. The man who burgles because his children are hungry may have some claim on public sympathy. He whose crime is one of impulse may be entitled to lenity. But he who hires out his muscles for the creation of disorder and in aid of a racket is a deliberate foe of organized society and should be penalized accordingly.

"It will teach no lesson to other thugs to put these men on good behavior for a limited time. Their 'duty' would simply be taken over by others like them. If Beck's thugs, however, are made to realize that they face San Quentin when they are caught, it will tend to make their disreputable occupation unpopular. Judge A. A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignment to the jute mill."

The editorial throughout is a vigorous argument against the granting of probation to the defendants, setting up in the strongest language a statement of the offense with which they were charged, refers to them as "sluggers for pay" and as "a deliberate foe of organized society", states that "it will teach no lesson to other thugs to put these men on good behavior for a limited time", and ends by stating that "Judge A. A. Scott will make a serious mistake if he grants probation" and that "this community needs the example of their assignment to the jute mill".

[fol. 220] Assault with a deadly weapon is punishable by imprisonment in the state prison or in the county jail, and whether it is a felony or a misdemeanor depends upon the

sentence pronounced by the court (Penal Code, sec. 245.) Likewise, conspiracy to commit a misdemeanor may be made a felony or a misdemeanor by the court according to the sentence. (Penal Code, sec. 182.)

In the Shannon and Holmes case there was actually pending before the court, on the date of publication, an application for probation. The editorial writer in forceful terms announced his opinion to the judge, mentioning him by name, that probation should be denied. By the suggestion "of their assignment to the jute mill" the judge was advised so to exercise his discretion as to make felons of the defendants.

It is of no consequence that this editorial, as argued by counsel for respondents, merely expressed the attitude which the Los Angeles Times had maintained for more than fifty years toward those who committed violence during labor disputes. Even if such attitude had been well known in this community for the period mentioned that fact did not excuse the language addressed directly to the judge telling him in few but expressive words how he should deal with the convicted defendants.

The affidavit by which the first proceeding (No. 428920) was instituted was filed June 3, 1938, and the order to show cause why the respondents should not be adjudged guilty of contempt as charged in the affidavit was issued on the same day. The affidavit in the second proceeding (No. 429179) alleges that on June 5th and 7th, respectively, editorials appeared in the Los Angeles Times commenting upon the first proceeding in such manner as to constitute contempt of court.

[fol. 221] In Count 1 it is alleged that on June 5, 1938, an editorial entitled "A Black Committee Here?" was published. Because of its length only short excerpts will be given. Generally it is a criticism of the committee for having commenced the first proceeding. Their act is referred to as "an effort to set up a sort of a local Black committee of press censorship". It then says: "In order that the public may be informed as to this extraordinary attack upon the right of free speech and a free press, these instances may be briefly described here".

The editorial, after giving the respondents' explanation of each of the articles complained of in the first proceeding, sets forth an argument in favor of the right of the newspaper, under the guaranty of freedom of the press, to

comment as it did upon the five cases which were the subject of the previous editorials, and discusses the merits of the first proceeding. It is an argument that might well be used upon the trial but not previously in such manner as to prejudice the public or to embarrass the court.

In the cases of In re Lindsley, supra, and Lindsley v. Superior Court, supra, the contempt consisted of attacks upon the prosecutor and the witnesses, not upon the court. There the attacks were vitriolic and vituperative while here they cannot be so classed, but they have no place in the public prints during the pendency of the proceeding. The members of the Committee of the Bar Association are officers of the court and are performing the same duty for the court and for the people as the district attorney performs in the prosecution of a criminal case. Any intimidation of or interference with an officer of the court while in the performance of his duties is a contempt of court.

[fol. 222] It is alleged in Count 2 of the second proceeding that on June 7, 1938, another editorial entitled "Curious Reasoning" was published likewise relating to the first proceeding. This editorial, like the last, consists of a statement of the facts from the standpoint of the respondents and an argument upon the law relating to their previous citation for contempt. It will serve no purpose to quote from it here.

By means of both of the editorials complained of in the second proceeding the respondents have placed before the public and the judges of this court their version of the facts and their argument as to the law, while the attorneys for the Bar Association were bound by the ethics of their profession to remain silent until the case was brought on for argument in open court.

By the decisions hereinbefore cited it is clearly settled that the question of contempt does not depend upon whether the judge in the case is a weak judge, or whether he is extraordinarily strongminded and has sufficient fortitude to withstand all threats and intimidation, or whether he is an average judge. Neither does it depend upon whether the judge is one who has an ear to the ground listening to political rumblings or an eye upon the weather vane to ascertain the direction of the popular wind, or whether he is one who knows no politics, hears no public clamor, but administers justice with an even hand. The judge need not

have been influenced, the speech need not even have been heard nor the article read by him. The question is whether the speech or the publication has a reasonable tendency to influence the judge, or is calculated to interfere with a fair trial and a righteous judgment, or tends to bring the court into disrepute with the public.

[fol. 223] An article constitutes a contempt if it tends to create in the public mind distrust and suspicion of the court, or if it places the judge in such a position that he will never know whether he was unconsciously biased by the publication, or the public will never know whether he was influenced in the direction pointed by the article, or because of his combative nature he was swayed in the opposite direction. (In re San Francisco Chronicle, supra.)

In No. 428920 the demurrer is sustained without leave to amend as to Counts 2 and 4, and is overruled as to Counts 1, 3, and 5. In No. 429179 the demurrer is overruled as to both counts. In each case the respondents may answer within five days, counsel having indicated this to be sufficient time. The contempt proceedings are set for trial on Thursday, August 25, 1938, at 10 A. M., in Department 34 of this court.

Dated the 18th day of August, 1938.

Emmet H. Wilson, Judge."

8. The foregoing stipulations, records, files and proceedings, and all matters therein referred to, constitute, for the purposes of the above entitled proceedings, a complete and correct record of the proceedings had and taken in the court whose orders are herein under review, and the review of said matters may be taken, heard and determined upon said record.

Dated: November 16, 1938.

The Times-Mirror Company, a corporation, Harry Chandler and L. D. Hotchkiss. By Cosgrove & O'Neil. By T. B. Cosgrove. By F. B. Yoakum, Jr. [fols. 224-225] The Superior Court of the State of California, in and for the County of Los Angeles. By J. H. O'Connor, County Counsel. By Douglas De Coster, Chief Deputy County Counsel. By Allen W. Ashburn. By Michael G. Luddy. By Isaac Pacht. By Arnold Praeger.

[fol. 225a] IN SUPREME COURT OF CALIFORNIA

L. A. 16928-16929—The Times-Mirror Co. v. Superior Court

MINUTE ENTRY OF ARGUMENT

Matters called for hearing on review and argued by T. B. Cosgrove on behalf of petitioners and by S. V. O. Prichard, assistant county council, Los Angeles County, and Allan W. Ashburn, on behalf of respondent.

At 12 noon court recessed until 2 P. M. Court reconvened at 2 o'clock P. M., with the same justices and attaches present as at forenoon session.

Mr. Ashburn resumed argument and requested thirty days for supplemental brief, which was granted and petitioner given twenty days to reply. Mr. Cosgrove argued further in behalf of petitioners. At the conclusion of Mr. Cosgrove's argument, Mr. A. L. Wirin, as amicus curiae, representing the American Civil Liberties Union, requested and was allowed ten minutes for argument. Matters noted ready for submission.

December 7, 1938.

[fol. 226] IN SUPREME COURT OF CALIFORNIA

L. A. 16928-16929—The Times-Mirror Co. v. Superior Court

ORDER OF SUBMISSION

Chief Justice Waste announced that because Justice Houser deems himself disqualified in these cases, Justice Pullen will sit and act in his stead. Matter argued by T. B. Cosgrove with whom F. B. Yoakum appeared on behalf of petitioner, followed, under court's permission, by A. L. Wirin, as amicus curiae in support of petitioner's position. A. W. Ashburn and Isaac Pacht replied on behalf of respondent. Mr. Cosgrove received permission to file a further brief bearing upon recent Bridges decision, and Mr. Ashburn reserved right to reply within ten days if desired. Matters submitted.

November 2, 1939.

[fol. 227] IN SUPREME COURT OF CALIFORNIA

In Bank

L. A. 16928

THE TIMES-MIRROR COMPANY, a Corporation, and L. D. HOTCHKISS, Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

L. A. 16929

THE TIMES-MIRROR COMPANY, a Corporation, and L. D. HOTCHKISS, Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, Respondent

OPINION—Jan. 31, 1940

These two proceedings were on the December 1938 calendar of this court, sitting in bank, with five regular justices and one justice pro tempore present. The cases were then argued by counsel for the respective parties and by one of the amici curiae. Thereafter and before any decision of either of said causes had been agreed upon, one of said justices died, and another of said justices declared his disqualification to participate in any decision that might be rendered in either of said causes. In this situation, this court found that it was unable to procure the concurrence of the constitutional number of qualified justices, who had heard the argument, in a decision of either of said causes, and basing its order upon that ground, directed that said causes be placed upon a subsequent calendar for argument. [fol. 228] This argument has been held, and the same counsel who argued these cases at their first hearing before this court were present and participated in the second argument before us.

The two proceedings present the same legal issues and substantially the same factual situation is present in each case, except as to the contents of the editorials which were the basis of the contempt charges filed against petitioners.

The petitioners were adjudged guilty of contempt of court for the publication of certain editorials in the Los Angeles Times, a newspaper of general circulation published in the city of Los Angeles, and these proceedings were instituted to review the two orders of court adjudging them guilty of contempt. Each of the contempt proceedings was instituted by an affidavit presented to the Superior Court of the County of Los Angeles by J. Louis Elkins, Secretary of the Los Angeles Bar Association, pursuant to the provisions of Section 1211 of the Code of Civil Procedure, and was prosecuted by attorneys from said bar association under the provisions of Part III, Title V of the Code of Civil Procedure, entitled, "Contempts."

Petitioners contend that these proceedings are "criminal actions" and should be instituted in the name of the people of the state of California and prosecuted like any other criminal action by the district attorney of the county in which the offense was committed, and that the accused were entitled to a jury trial and all other rights and privileges accorded to a defendant in a criminal action. Petitioners further claim that they are immune from punishment by virtue of that portion of subdivision 13 of section 1209 of the Code of Civil Procedure, reading as follows: "But no speech or publication reflecting upon or concerning any [fol. 229] court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings."

These issues were all before us in the case of Bridges v. Superior Court, recently decided by us and reported in 98 Cal. Dec. 341, and the same contentions were made by the petitioner in that case as are now made by the present petitioners. A reference to that decision will show that we held that none of said contentions was meritorious, and that we sustained the procedure followed in that case which is precisely like that pursued in these proceedings, and furthermore we held that the provisions of subdivision 13 of section 1209 of the Code of Civil Procedure, relied upon by the petitioner Bridges as well as by the petitioners in these proceedings were unconstitutional, and therefore afforded no protection for the publication of the article by the petitioner in that proceeding. It is apparent, therefore, that all the legal questions presented by these two petitions, and stated above, have been decided by us adversely

to the contentions of said petitioners. No useful purpose would be gained by reiterating what we said in this former opinion in the decision of these questions. It, therefore, only remains for us to apply the law as settled by our previous decision to the facts in the present proceedings.

The first of these two proceedings was brought to review the order of the trial court adjudging the petitioner, the Times-Mirror Company, publisher of the Los Angeles Times, and L. D. Hotchkiss, managing editor of the Los Angeles Times, guilty of contempt of court upon the charge [fol. 230] set forth in Count 1 of the affidavit of J. Louis Elkins, and to review said order of said court adjudging the petitioner, the Times-Mirror Company, guilty of contempt of court upon two additional charges of contempt contained in said affidavit, and set forth in Counts 3 and 5 respectively of said affidavit.

The second of said two proceedings was instituted to review the order of said court adjudging the petitioners, The Times-Mirror Company, the publisher of the Los Angeles Times, the president of the Times-Mirror Company, and its managing editor, guilty of contempt of court upon the two charges contained in said second affidavit of J. Louis Elkins, presented to said superior court.

In determining whether the publication of an editorial, or article, commenting upon a pending action, renders the author thereof guilty of contempt of court, the test to be applied to such a publication is whether it had a reasonable tendency to interfere with the orderly administration of justice in the action which was the subject of the comment and which was then before the court for its consideration, or decision. If the article had that effect, then its publication rendered the person responsible for its publication guilty of contempt of court. This question was before us in the Bridges case, where authorities supporting the statements just expressed, from this court, the Supreme Court of the United States, and other jurisdictions, are cited and may be found on page 357 of our opinion.

The first of the several editorials to which we will give consideration is that set forth in Count 1 of the accusatory affidavit presented to the court and sworn to by J. Louis Elkins. It is entitled, "Sit-Strikers Convicted," and referred to the case of People v. William Busick, and others, [fol. 231] in which action the jury had rendered a verdict finding certain of the defendants guilty of a conspiracy to

violate certain sections of the Penal Code. It was as follows:

"The verdict of a jury finding guilty the twenty-two sit-strikers who led the assault on the Douglas plant last February, will have reverberations up and down the Pacific Coast and in points farther east.

"The verdict means that Los Angeles is still Los Angeles, that the city is aroused to the danger of davebeckism, and that no kind of union terrorism will be permitted here.

"The verdict may have a good deal to do with sending Dave Beck back to Seattle. For, while the United Automobile Workers have no connection with Beck, their tactics and his are identical in motive; and if Beck can be convinced that this kind of warfare is not permitted in this area he will necessarily abandon his dreams of conquest.

"Already the united farmers and ranchers have given Beck a severe setback. The Hynes hay market is still free and it has been made plain that interference with milk deliveries to Los Angeles will not be tolerated.

"Dist-Atty. Fitts pledged his best efforts to prevent and punish union terrorism and racketeering in a strong radio address, and followed it up yesterday with a statement congratulating the jury that convicted the sit-downers and the community on one of the 'most far-reaching verdicts in the history of this country.'

"In this he is correct. It is an important verdict. For the first time since the present cycle of labor disturbances began, union lawlessness has been treated as exactly what it is, an offense against the public peace punishable like any other crime.

[fol. 232] "The seizure of property by a militant minority which arrogated to itself the right of dictating not only to employers, but to other workers not in sympathy with it, what should be the terms and conditions of working, has proved to be within the control of local peace officers and authorities.

"Nobody ran off to Washington to get this affair handled. It was attended to right here.

"Government may have broken down in other localities; whole States may have yielded to anarchy. But Los Angeles county stands firm; it has officers who can do their duty and courts and juries which can function.

"So long as that is the case, davebeckism cannot and will not get control here; nor johnlewisism either."

The verdict finding said defendants guilty was rendered on December 20th, 1937, and the trial judge before whom the case was pending, fixed December 22, 1937, as the time for pronouncing judgment upon the defendants. On the 21st of December, 1937, the above mentioned editorial was published, which date, it will be seen, was one day after the verdict and one day before the time fixed by the court for pronouncing judgment. At the time fixed by the court, provided no motion for a new trial nor application for probation was made, it was the duty of the trial court to pronounce judgment against said defendants. By its verdict, the jury found the defendants guilty of a conspiracy to violate sections 418 and 594 of the Penal Code. While each of the crimes denounced in these sections respectively is made a misdemeanor, by section 182 of the Penal Code a conspiracy to commit a misdemeanor is punishable by imprisonment in the county jail or state penitentiary not exceeding two years, or by a fine not exceeding five thousand [fol. 233] dollars, or both. By section 19a of the Penal Code, it is provided that in no case shall any person sentenced to confinement in a county jail on conviction of a misdemeanor be committed for a period in excess of one year. Therefore in sentencing the defendants found guilty by the jury in the case of People v. William Busick, et al., it was within the power of the trial court to sentence them to the county jail for one year or less, or to the state penitentiary, where under the indeterminate sentence law they might be imprisoned for a term of two years, or they might be punished by a fine not exceeding five thousand dollars, or by both imprisonment and fine. The defendants in said action had the right to move for a new trial and also to make application for probation.

At the time of the publication of said editorial, it cannot be said that the proceedings in the case of People v. William Busick et al. had reached such a point of finality as to form a proper subject of comment. The defendants found guilty by the verdict of the jury were yet to be sentenced by the court. They had the right in said action, at the proper time in the future, to make a motion for a new trial and an application for probation. Even if they did not make either said motion or application, the case against them was still pending for the purpose of pronouncing judgment. As we

have shown, wide discretion was given the court in pronouncing judgment upon the verdict rendered by the jury. The judgment of the court, acting within the discretion with which the judge was by law clothed, might vary from a sentence to the state penitentiary for a possible term of two years, in which case the defendants would be guilty of a felony, or it might be a sentence of confinement in the county jail for a period as short as one day, or to pay a simple fine [fol. 234] as low as one dollar. It is obvious that the pronouncing of judgment in a case of this character where such wide discretion is given the trial judge, was a matter of grave concern to the parties to the action, and particularly to the defendants, and it was of the utmost importance to them that the trial judge in pronouncing judgment against them should act strictly in accordance with the record before him, and that his judgment should not be hampered nor swayed by any outside influence. These observations apply also to the motion for a new trial and the application for probation. While neither motion nor application had been made at the time of the publication of the editorial, the right of the defendants to pursue said remedies existed at said time and the case in which they might be exercised was pending at the same time.

Furthermore, a motion for a new trial and an application for probation in the event a new trial is denied is in accordance with the ordinary and usual practice followed in criminal cases and is sanctioned by the Penal Code. We can see no force in petitioners' argument that because the editorial was published after the verdict, but prior to the making of said motion or application, the proceedings in the case had reached such a point of finality as to form a proper subject of comment. It cannot be successfully contended that the verdict was decisive of the case or was a final determination of the fate of the defendants. Even if we disregard the convicted defendants' right to move for a new trial and their right to apply for probation, there still remained, when said editorial was published, the duty of the court to pronounce judgment against said defendants. The case was still pending for that purpose, and until judgment was pronounced, [fol. 235] any public comment which would have a reasonable tendency to influence the court in pronouncing sentence upon the defendants in said action would not be justified.

In respect to the judgment of the trial court finding both Hotchkiss, the managing editor, as well as the Times-Mir-

ror Company, guilty of contempt of court for the publication of the editorial contained in Count 1 and entitled "Sit-Strikers Convicted," it is contended that the accusatory affidavit fails to allege that L. D. Hotchkiss personally caused or permitted the publication of the editorial set forth in Count 1, and the case of Otis v. Superior Court, 148 Cal. 129, is cited in support of said contention. The allegations in the two affidavits are materially different. In the Otis case, the affidavit alleged that certain individuals were officers of the publishing company, but contained no allegation that they caused or permitted the publication of the offending articles. The affidavit accusing petitioners of being in contempt of court in the present proceeding expressly alleges not only that petitioner, L. D. Hotchkiss, was the managing editor of the Los Angeles Times but that he, together with the publisher and other officers, "caused to be printed and published the issue of the Los Angeles Times which contained the editorial entitled 'Sit-Strikers Convicted.'" It would be difficult to couch the affidavit in more direct terms.

We now pass to the consideration of the questions as to whether this editorial entitled, "Sit-Strikers Convicted," was of such a character as to render those responsible for its publication guilty of contempt of court. In our investigation of the various decisions of the several courts of this country, including those rendered by the Supreme Court [fol. 236] of the United States, respecting the character of publications which rendered their authors subject to disciplinary action by the courts in contempt proceedings, we are impressed with the statement found in an opinion rendered by Justice Holmes in the case of Patterson v. Colorado, 205 U. S. 454. After referring to the effect of the publication of matters pending in a jury case upon the members of a jury before whom the action is being tried, that learned justice further stated, "What is true with reference to a jury is true also with reference to a court. Cases like the present are more likely to arise, no doubt, when there is a jury and the publication may affect their judgment. Judges generally, perhaps, are less apprehensive that publications impugning their own reasoning or motives will interfere with their administration of the law. But if a court regards, as it may, a publication concerning a matter of law pending before it, as tending toward such an interference, it may punish it as in the instance put. When a case

is finished, courts are subject to the same criticism as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."

This excerpt from the opinion of Justice Holmes was quoted with approval by this court in the two cases of In re Shuler, 210 Cal. 377, 403, and in the Bridges case. It may well be considered as a correct statement of the law in this state as the true test to be applied. This question was discussed in greater detail in the Bridges case where additional authorities are cited in support of the "reasonable tendency" rule.

In passing, we might here answer briefly the argument of petitioners that the proper test is not the reasonable ten- [fol. 237] dency of the publication to interfere with the administration of justice or obstruct or embarrass the court in the decision of the pending matters, but is the effect of the publication upon the particular judge before whom the case is pending, or in the words of petitioner, "there must of necessity be a uniform yardstick to measure off or determine the presence or absence of 'reasonable tendency to influence.' This criterion or yardstick, we believe, and accordingly contend, is the mentality, fortitude and integrity of the average judge." Petitioners cite no authority in support of their theory, and it has been expressly repudiated by a recent decision of the Supreme Court of the United States, (Sinclair v. U. S., 279 U. S. 749, 764) where that court held as follows: "In other words, having regard to the powers conferred, to the protection of society, to the honest and fair administration of justice and to the evil to come from its obstruction, the wrong depends upon the tendency of the acts to accomplish this result without reference to the consideration of how far they may have been without influence in a particular case. The wrongdoer may not be heard to try the power of the court to resist acts of obstruction and wrongdoing by him committed as a prelude to trial and punishment for his wrongful acts."

The editorial entitled, "Sit-Strikers Convicted" unquestionably approved the jury's verdict. It praises the jury for its rendition, and the court in which the action was pending. It discussed the importance of the verdict and its effect upon the industrial strife then being waged in and beyond the limits of the City of Los Angeles. Its reference to "union terrorism and racketeering" can only be con-

strued as implying that the convicted defendants in the pending action were engaged in such activities. These ex- [fol. 238] pressions of approval of the verdict and condemnation of the convicted defendants made by such an influential paper as the Los Angeles Times on the day just preceding the day fixed by the court for pronouncing sentence could not help having an effect upon the trial judge, who, as we have seen, was clothed with a wide discretion in fixing the punishment of the convicted defendants, to say nothing respecting his duties in case a motion for a new trial was made or an application for probation was presented to him. It cannot reasonably be said that they would have no tendency to influence the trial judge in rendering the judgment, or in ruling upon the other matters that in the regular order of the proceedings in criminal matters would come before him in the case then pending. The editorial may not have been intended, but it is capable of being construed, as a notice to the trial judge that no leniency should be extended to the convicted men, and, furthermore, that should the court act contrary to the suggestions contained in the editorial, it might well expect adverse criticism in the columns of The Times. Viewing the editorial in the light of these considerations, we are satisfied that its reasonable tendency was to interfere with the ordinary administration of justice by the court in the action then pending before it.

The next publication, being the editorial set forth in Count 3 of said affidavit, was an editorial entitled, "The Fall of an Ex-Queen." It referred to Helen M. Werner, who on the 12th day of April, 1938, had been convicted by a jury on two counts, one charging her with an attempt to commit grand theft, and the other with a violation of section 653f of the Penal Code, respectively. On the same day, she gave notice of motion for a new trial, and the judge before [fol. 239] whom the case was pending on the same day fixed April 22, 1938, as the time for hearing said motion and pronouncing judgment. On the 14th day of April, 1938, the alleged contumacious editorial was published.

Practically the same discretion as was given the trial judge in pronouncing judgment in the case against the so-called "Sit-Strikers" was given him in the case against Helen M. Werner. The facts of the case are in principle similar, except that in the Werner case the defendant had actually made a motion for a new trial and said motion was

pending at the time of the publication of the editorial in question.

The editorial was as follows: "Politics as we know it is an essentially selfish business, conducted in the main for personal profit of one kind or another. When it is of the boss type, it is apt to be pretty sordid as well. Success in bossship, which is a denial of public rights, necessarily implies a kind of moral obliquity if not an actually illegal one.

"So that it is something of a contradiction of sense if not of terms to express regret that the political talents of Mrs. Helen Werner were not directed to other objectives than those which, in the twilight of her active life, have brought her and her husband to disgrace. If they had been, she would not have been in politics at all and probably would never have been heard of in a public way. Her natural flair was purely political; she would have been miscast in any other sphere of activity.

"Mrs. Werner's primary mistake seems to have been in failing to recognize that her political day was past. For years she enjoyed the unique distinction of being the country's only woman boss—and did she enjoy it! In her heyday she had a finger in every political pie and many were [fol. 240] the plums she was able to extract therefrom for those who played ball with her. From small beginnings she utilized every opportunity to extend her influence and to put office holders and promising political material under obligations to her. She became a power in the backstage councils of city and county affairs and from that place of strategic advantage reached out to pull the strings on State and legislative offices as well.

"Those were the days when Mrs. Werner was 'Queen Helen' and it is only fair to say that to her the power was much more important than the perquisites. When the inevitable turning of the political wheel brought new figures to the front and new bosses to the back, she found her grip slipping and it was hard to take. The several cases which in recent years have brought her before the courts to defend her activities seem all examples of an energetic effort to regain and reassert her onetime influence in high places. That it should ultimately have landed her behind the bars as a convicted bribe-seeker is not illogical. But if there is logic in it, the money meant less to Mrs. Werner than the name of still being a political power, one who could do things

with public officials that others could not do. To herself at least she was still Queen Helen."

While the editorial does not refer to the case which was then pending against Helen M. Werner, it is hardly conceivable that those in charge of its publication were ignorant of the pendency of said action. Both Helen M. Werner and her husband had been active and prominent in politics both in the city and in the county of Los Angeles. In fact the editorial so states in so far as the activities of Helen M. Werner were concerned, and further suggests that she [fol. 241] "reached out to pull the strings on state and legislative offices as well." With a person of such local prominence, charged with serious offenses, on trial, it must be assumed that the petitioners were cognizant of the action then pending against her, and that it had reached the stage which would require either the pronouncement of judgment, or the granting of a new trial. With this knowledge before them, they prepared and published the editorial which it must be conceded was a scathing denunciation of Mrs. Werner and a caustic criticism of her political activities in recent years. That a publication of this character concerning a person convicted by the verdict of a jury, and who was soon to appear for sentence, would have a disturbing effect upon the judge before whom the case was pending when the time came for pronouncing judgment, we think can neither be questioned nor denied. Such a publication according to the authorities hereinbefore cited comes within those prohibited acts, the commission of which renders those responsible therefor liable to the punitive powers of the court.

The editorial contained in Count 5 of said accusatory affidavit is entitled, "Probation for Gorillas?". It was published after two defendants, Shannon and Holmes, had been found guilty by a jury of conspiracy to violate section 245 of the Penal Code (assault with a deadly weapon) and assault with a deadly weapon. They made application for probation, and on the 2d day of May, 1938, the judge who presided at the trial set June 7, 1938, as the time for passing upon their application for probation. On May 5, 1938, the editorial entitled as above was published, and is as follows:

"Two members of Dave Beck's wrecking crew, entertainment committee, goon squad or gorillas, having been convicted in Superior Court of assaulting nonunion truck

[fol. 242] drivers, have asked for probation. Presumably they will say they are 'first offenders,' or plead that they were merely indulging a playful exuberance when, with slingshots, they fired steel missiles at men whose only offense was wishing to work for a living without paying tribute to the erstwhile boss of Seattle.

"Sluggers for pay, like murderers for profit, are in a slightly different category from ordinary criminals. Men who commit mayhem for wages are not merely violators of the peace and dignity of the State; they are also conspirators against it. The man who burgles because his children are hungry may have some claim on public sympathy. He whose crime is one of impulse may be entitled to lenity. But he who hires out his muscles for the creation of disorder and in aid of a racket is a deliberate foe of organized society and should be penalized accordingly.

"It will teach no lesson to other thugs to put these men on good behavior for a limited time. Their 'duty' would simply be taken over by others like them. If Beck's thugs, however, are made to realize that they face San Quentin when they are caught, it will tend to make their disreputable occupation unpopular. Judge A. A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignment to the jute mill."

But little is said, or can be said, in defense of the publication of this editorial. Among other things, it calls by name the judge before whom the action was pending, and directly charges that the judge will make a serious mistake if he grants probation to the two convicted defendants. The edi- [fol. 243] torial as a whole is a striking example of a "premature statement, argument, and intimidation" respecting the case on trial which the court condemned and held to be contumacious in the case of Patterson v. Colorado, supra.

While petitioner, The Times-Mirror Company, advances no serious defense of its publication of said editorial in so far as the character and nature of the editorial are involved, it does insist that as the matter then before the court was the question of probation the petitioner was privileged to make whatever comment it was thought advisable under all the circumstances of the case. In other words, petitioner contends that a different rule applies to statements made and articles published respecting a case, or the parties

thereto, when the sole matter before the court relates to the probation of a defendant than when the court has under consideration the guilt of the defendant or other strictly legal question arising during the trial of a defendant in a criminal action. When the sole matter before the court relates to the probation of a defendant petitioner contends that any person is free to communicate with the court or to express his opinion publicly through the press, or otherwise, respecting the propriety or advisability of the court's granting or denying probation to the applicant. We find ourselves unable to agree with this contention. Section 1203 of the Penal Code prescribes the procedure governing applications for probation and the source from which the court may receive the necessary information to enable it to act in such matters. By this section of the code the court must refer the application to the probation officer whose duty it is after investigation to make a report to the court which report the court must consider in making its final decision in granting or denying probation. We find nothing in said [fol. 244] section of the code nor in any other provision of the law which would justify any different approach to the court when matters of probation are before it than when the regular proceedings before and at the trial are under the court's consideration. Mr. Chandler in an affidavit filed with the trial court at the hearing of the contempt proceedings against petitioners stated, "In one recent probation case, The Times was advised by a former presiding superior judge that a criticism of probation published subsequent to the granting should have been made known while the matter was pending instead of afterwards." If this advice could be construed as permitting the publication of an editorial like that entitled, "Probation for Gorillas?" then the same right should be accorded to those newspapers favoring the probation of these same defendants referred to in the editorial. We would then have the deplorable sit ation of a heated newspaper controversy being carried on in the community while the question of probation was before the court for determination. That such a situation would contribute to the orderly administration of justice, we think no one would contend. We do not mean to hold that a person interested for or against the probation of a defendant may not make known his views as to the propriety of granting or denying probation to the probation officer, so that this officer may investigate the source or grounds of these views

and report the result of his investigation to the trial judge. But to approach the judge either directly or indirectly, through the columns of a newspaper, or otherwise, in our opinion is not permissible. The probation of a defendant is a legal act of the court and is governed by the same rules as are applicable to any other legal proceeding before the court.

[fol. 245] Possibly by reason of the title of the editorial, and the calling of the trial judge by name, followed by the statement that he would make a mistake if he should grant probation to the defendants, petitioner has considered this editorial as referring only to the application of defendants for probation. But the application for probation was not the only matter in that action that was then pending before the court. Judgment had not yet been pronounced in said action. The same wide discretion was given to the trial judge in sentencing the defendants in the criminal action commented on in this editorial as was given the trial judge in the actions commented on respectively in the two previous editorials. Therefore, what we have said respecting the effect of each of the two preceding editorials, is applicable to the publication of the editorial entitled, "Probation for Gorillas?". It referred to an action which was then pending in court, and the statements contained therein were calculated to and had a reasonable tendency to influence the proceedings in said action, and to interfere with the proper administration of justice by the court in which said action was pending.

In Mr. Chandler's affidavit he sets forth at some length the history of the industrial strife that has been waged in Los Angeles and in other parts of the United States during the past years. In this affidavit, he states, "For approximately fifty years, the Los Angeles Times has been the principal newspaper exponent in the United States of the open shop system of industrial relations." It is further shown in said affidavit that the position of the Los Angeles Times respecting the industrial controversy was well known in the City of Los Angeles and elsewhere throughout the state. The affidavit then goes into some considerable detail [fol. 246] as to the part taken by the Los Angeles Times in condemning the "sit-down strikes," and the strike of the Teamsters' Union to which the two convicted defendants mentioned in the "Probation for Gorillas?" editorial

belonged. It was stipulated that the allegations contained in said affidavit were true.

From the facts set forth in said affidavit it is contended that the position of the Los Angeles Times was so well known in the City of Los Angeles both by the citizens generally and the officials of said city and the county of Los Angeles, including the members of the judiciary of said county, that the superior judges before whom the two actions were pending would not be influenced nor would either of the defendants in either of said actions be prejudiced to any extent by the publication of the respective editorials which particularly referred to the action in which they were convicted. The weight to be given to this evidence was solely a matter resting with the trial court. In these proceedings for the review of the judgments of the trial court finding the petitioners guilty of contempt, the sole question before us is one of jurisdiction of the trial court to render the judgment under review, and in such a case the review of the evidence is limited to determining whether there was any substantial evidence to sustain the jurisdiction of the trial court. (McFarland v. Superior Court, 194 Cal. 407; Bridges v. Superior Court, 98 Cal. Dec. 341, 354, and authorities therein cited.) The affidavit of Mr. Chandler did no more than cause a conflict in the evidence which the trial court resolved against petitioner.

It is earnestly and seriously contended by petitioners that the order adjudging petitioner guilty of contempt of [fol. 247] court violates the right of freedom of speech and of the press guaranteed by the state and federal constitutions. What we said in the Bridges case respecting the right of free speech applies with equal force to the claim of petitioners herein that they are protected in the publication of said editorial by the constitutional guaranty of freedom of the press. There is no fundamental difference between these two constitutional privileges. The right of free speech and the freedom of the press are guaranteed by the same section of both the federal and state constitutions. In In re Shuler, 210 Cal. 377, 402, we held that, "No difference can be discerned between the rights of the citizen and the proper limitation thereof under his aforesaid constitutional guaranty, whether that citizen be a minister speaking from his pulpit, or a broadcaster through the radio, or an editor through his newspaper, or a curbstone orator * * * or an anarchist * * * the right and the limitation thereof

being the same when the matter involved in the utterances of all or any of these affects or manifestly tends to affect the orderly administration of justice in pending causes before judicial tribunals and the judges thereof." And in In re Shortridge, 99 Cal. 526, 535, we find this concise language, "As stated before, what may be spoken may be written, and the converse of the proposition is true that what may not be spoken under such circumstances may not be written."

The constitutional right of freedom of the press and the limitations thereon have been the subject of innumerable decisions of the state and federal courts. We shall cite only a very few of these decisions, and briefly quote from them.

In the case of Toledo Newspaper Co. v. United States, 247 U. S. 402, there existed a bitter controversy between the [fol. 248] City of Toledo and a street railway operated in said city. This controversy led to an action between these parties in which the creditors of the railway company intervened. While this action was pending, a local newspaper, published by the Toledo Newspaper Company, began the publication of articles adverse to the rights asserted against the city by the creditors and the railway company. The publisher and editor of the newspaper were found guilty of contempt of court by reason of the publication of said articles. The matter came before the Supreme Court of the United States and among other contentions was the contention that the publications related to a matter of public concern and were safeguarded from being made the basis of contempt proceedings by "the assuredly secured freedom of the press." In answering this contention the court on page 419 of the opinion said: "We might well pass the proposition by because to state it is to answer it, since it involves in its very statement the contention that the freedom of the press is the freedom to do wrong with impunity and implies the right to frustrate and defeat the discharge of those governmental duties upon the performance of which the freedom of all, including that of the press, depends. The safeguarding and fructification of free and constitutional institutions is the very basis and mainstay upon which the freedom of the press rests, and that freedom, therefore, does not and cannot be held to include the right virtually to destroy such institutions. It suffices to say that, however complete is the right of the press to state public things and discuss them, that right, as every other right enjoyed

in human society, is subject to the restraints which separate right from wrong-doing."

[fol. 249] In State v. Lovell, 117 Neb. 710, 717, the supreme court of that state has expressed similar views in the following language: "The freedom of the press vouchsafed by the Constitution implies the publisher's respect for the equal rights of others. One of those rights that the publisher is bound to respect is a litigant's privilege of appearing before an independent, impartial court for judicial redress, uninfluenced or embarrassed by contemptuous publications pending litigation. Under the Constitution this right is as sacred as the freedom of the press. By both state and federal Constitutions government is composed of distinct legislative, executive and judicial departments of equal rank. The judiciary is an independent tribunal to which the individual may resort whenever his property rights are invaded by private wrongdoers, by public agencies or by the legislative or executive departments. In controversies over rights guaranteed by the Constitution the individual stands before the court on an equality with government itself. The constitutional provision creating an independent judiciary is recognized by historians, philosophers and statesmen as a vast contribution to the science of government. To preserve the purity, impartiality and independence of the court is a solemn duty that cannot be evaded without endangering all constitutional rights, including the freedom of the press." The same court in the case of State v. Bee Publishing Company, 60 Neb. 282, 296, expressed itself as follows: "Courts are charged with the function of administering justice, and it is their duty not only to give to every suitor his demandable right, but to give him assurance that no banned and hostile influence shall operate against him while his cause is under [fol. 250] consideration. A litigant is entitled not only to a just decision, but to a decision altogether free from the suspicion of having been coerced. Nothing else will satisfy him; nothing less can fill the measure of his expectations. He has no standard with which to gauge judicial firmness; and if the court has been exposed to influences calculated, as in the Kennedy case, to tell against him, he will not know whether an adverse decision is the voice of the law or an echo of the mob."

In Tate v. State, 132 Tenn. 131, the supreme court of Tennessee, at page 139 of its decision states the rule in the

following terms: "The liberty of the press is not a more sacred right than the right to a fair and impartial trial, which the constitution guarantees to all litigants. If the newspapers are permitted at will to comment on pending cases and to bring to the attention of the jurors sensational rumors and matters which cannot properly be considered in the determination of the issues before them, there can be no such trial. That such publications can be made with impunity is not asserted in any jurisdiction, so far as we know. The courts must be empowered to keep jurors from improper influence pending their deliberations."

The United States Circuit Court of Appeals of the Ninth Circuit in In re Independent Publishing Company, 240 Fed. 849, 862, states the law as follows: "Liberty of the press is subordinate to the independence of the judiciary, and it is not expedient that any class in the community should be privileged to interfere with the rights of litigants or to embarrass or obstruct the administration of justice."

[fol. 251] It is useless to further extend the citation of authorities upon this subject. The above are sufficient to show, we think, conclusively that the constitutional right of freedom of the press does not protect petitioners in the publication of the editorials contained in Counts 1, 3 and 5 respectively of the affidavit filed in the first of the two proceedings now before us. On the other hand, the law as expressed by the overwhelming weight of authority establishes that petitioners were not justified in the publications of said editorials concerning pending actions and that the order adjudging petitioners guilty of contempt of court as set forth therein should be affirmed.

Our attention has been called to the very recent cases of Schneider v. State of New Jersey, and others, decided, November 22, 1939, and reported in 60 Supreme Court Reporter, 146. These cases all involve ordinances of certain cities prohibiting the distribution of handbills within the municipality. It was held that these various ordinances were an infringement upon the constitutional guaranty of freedom of speech and the press. We are unable to discern any applicability of these cases to the case now before us. The principal claim in support of the constitutionality of these ordinances was that the circulation of handbills tendered to litter up the streets of the city and render them unsightly and offensive, and the purpose of the ordinances was to keep the streets clean from the litter and refuse re-

sulting from the indiscriminate distribution of the handbills. The court held that there were other methods of preventing such littering of the streets, among which the court suggested was the punishment of those who actually throw papers on the street. Furthermore, the court held that the [fol. 252] additional burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution was insufficient to justify the enactment of an ordinance which would infringe upon the constitutional guaranty of freedom of speech. In those cases the only detriment which might result from the distribution of handbills was the possible additional cost to the city in the cleaning of its streets. In the present case the detriment caused by the publication of said editorials was the probable denial of a fair trial to the litigants in the actions then pending before the courts which were the subject of said editorials. It appears to us that the inapplicability of those cases to the instant case is obvious.

The two editorials which formed the basis of the contempt proceedings and the subsequent conviction of certain of the petitioners as set forth in the record of the second of the two proceedings now before us were published on June 5th and 7th respectively in the Los Angeles Times, following the institution of the first of these two proceedings on June 3, 1938. The accusatory affidavit in the first of said proceedings was filed in the Superior Court of the County of Los Angeles on the 3d day of June, 1938, and on the same day said court issued an order requiring the respondents in said proceedings to appear on the 23d day of June, 1938, to show cause why they should not be adjudged guilty of contempt of court. The editorials in question were therefore published while the first of these two proceedings was pending in said court. The editorials are lengthy and for that reason are not set forth herein. The first of the two editorials was mainly devoted to a resume of the five cases commented [fol. 253] upon in the previously published editorials. These five cases at that time had reached a point of finality and were therefore subject to proper comment by any citizens. The second of the editorials consisted largely of a defense of the right of free speech and the freedom of the press. Each editorial referred to the pending contempt proceeding against petitioners and criticized the committee of the bar association for instituting said proceedings. The trial court in referring to the cases of In re Lindsley, 75 Cal.

App. 122, characterized the editorials involved in that case as "vitriolic and vituperative" and added "while here they cannot be so classed." The editorials were temperate and considerate and were free of any abusive or immoderate language. In fact, the trial court stated that the editorials constituted "an argument that might have been used upon the trial." In view of the authorities hereinbefore cited respecting the character of the publications which subject their authors to punishment for contempt of court, we are unable to hold that either of the two editorials published on June 5th and June 7th respectively, came within that class.

It is therefore ordered that the judgment of the trial court in case, L. A. No. 16,928 be and the same is hereby affirmed, and that the judgment in case, L. A. No. 16,929 be and the same is hereby reversed.

Curtis, J.

We concur: Shenk, J.; Carter, J.; Waste, C. J.; Pullen, J., pro tem.

[fol. 254] IN SUPREME COURT OF CALIFORNIA

DISSENTING OPINION OF JUDGE DOUGLAS L. EDMONDS

In the case of Bridges vs. The Superior Court, 98 Cal. Dec. 341, I stated at length the reasons for my opinion that Section 1209 of the Code of Civil Procedure is constitutional and should be upheld. This statute, which was adopted almost fifty years ago and within a few months after a newspaper editor had been found guilty of contempt of court, declares the public policy of the people of this state in regard to publications relating to a judge which are not made in the immediate presence of a court while in session and in such manner as to actually interfere with judicial proceedings.

Whether persons should be allowed to write or speak about a court or judge under the conditions mentioned in the statute, without being subject to prosecution for contempt of court in summary proceedings, is a question upon which there will always be great difference of opinion. But it is not the province of a court to determine the policy which is most conducive to human welfare and governmental stability. That is the legislative function, and the

judicial department may only determine whether the determination of the legislature violates a constitutional guarantee.

In my judgment, the opinions of this court in former cases where the statute was in question were written with more concern for upholding the inherent power of courts than for the constitutional guarantees of free speech and a free press. Yet the experience of New York and Pennsylvania, where laws similar to that of California have been in effect for over one hundred years, show that neither the existence of nor respect for courts has been seriously challenged by taking from judicial officers the uncontrolled right to pass upon alleged constructive contempts of court. Judi- [fol. 255] cial necessity based upon the claim of inherent power is neither reason nor authority for setting aside a statute which expresses the policy of the people of this state concerning acts which might otherwise be punishable as constructive contempts.

For these reasons I believe that each of the judgments should be reversed.

Douglas L. Edmonds.

[fol. 256] In Supreme Court of California

Dissenting Opinion of Gibson, J.

I dissent. The law as laid down in the Bridges case is controlling in this jurisdiction on the power of a court to punish summarily for constructive contempt. But, as I did not participate in the Bridges case, and the question is before me for the first time, it seems appropriate to express my views thereon. I disagree with the conclusion reached in the Bridges case and in the majority opinion herein, and I concur in the views of Justice Edmonds, dissenting in each case.

The rules laid down in these cases do not give adequate recognition to or protection for the constitutional right of free speech and press, but instead sacrifice that fundamental right for a need which is fancied rather than real. The integrity and independence of the court is not the only matter to be considered. There is the equally important and equally fundamental need of fearless comment on all activities affecting the public welfare, including the opera-

tions of the courts. To preserve one basic right at the expense of another is a doubtful gain. And, as very clearly appears from this and other proceedings, the two rights frequently come into conflict. When this happens, each must give way in some degree in order that a proper balance may be maintained, and both preserved. A court is usually most concerned with the immediate problem of safeguarding itself from outside influences during a pending proceeding; but in invoking drastic measures toward that end, it may do irreparable damage to the other fundamental right.

The assumption that to permit legislative regulation of the asserted inherent power of a court to punish summarily for constructive contempt would ultimately lead to its destruction, is without foundation. There is doubtless some justification for this fear where direct contempts, those which actually interrupt the court proceedings, are involved; but constructive contempts do not demand the same prompt and summary action. Their effect is indirect and not immediately felt; their punishment can likewise be delayed without injury to the court's prestige or procedure. [fol. 257] If the courts should actually be subjected to intimidation or other improper influences by persons immune from any punishment or restraint under the statute law, then the court could doubtless assert its power as an arm of the government in its own behalf. But no such situation has arisen either here or elsewhere, [illegible] doubt whether it ever could arise in normal times. However desirable it might seem from the viewpoint of the court to have this power, it is not in fact necessary to enable it to function and it is both safe and consistent with democratic principles to leave the matter within the control of the legislature.

The experience of those few states which have acquiesced in the legislative regulation of the court's power to punish for constructive contempt is ample proof of the fact that the courts function just as well and safely under such regulation as they do where they are entirely free from it. We have seen no signs and have heard no charges of disrespect or impaired efficiency with regard to the courts of Pennsylvania, Kentucky, New York or South Carolina, where the inherent power doctrine is not followed. In our own state an example of peculiar inconsistency is found in the rule on disqualification of judges. If, as the majority opinion holds, the inherent power of the courts makes them

immune from legislative interference, no regulation which limits that power can be valid. But we have upheld legislation which permits the challenge of a judge for bias or other disqualification in proceedings for constructive contempt. (See Briggs v. Superior Court, 211 Cal. 619.)

There is a growing belief among thoughtful students of this problem that the solution is to eliminate summary punishment and make the offense subject to the usual rules [fol. 258] of criminal trial. The court's integrity may be protected in the same manner as other rights of person and property and other institutions of government are protected. This is indeed, as Justice Edmonds shows, the historically correct position; the venture into summary punishment has been demonstrated to be both bad history and bad law. Today the security of the state and all of its departments, officers, and branches, except the judiciary, is protected from improper influences only by the general statute law enforceable by trial of the offender in the courts before a jury. We would, I am sure, be amazed at the suggestion that any other officer or body of government, executive or legislative, be given this potent power; yet to the intelligent observer who is not a judge of a court, the spectacle of a judicial officer acting as prosecutor and judge, and meting out punishment besides, must seem equally amazing. The same observer might further reflect on the fact that matters having a purely hypothetical tendency to interfere with a judicial proceeding are conceived to require a more drastic system of suppression and punishment than overt acts of treason or rebellion striking at the very foundation of the government. In time we shall, I believe, be brought to the conclusion that the normal course of trial is adequate and proper, and that either by a change in judicial viewpoint or by a constitutional amendment the legislative control will be recognized. (See comments, 48 Yale L. J. 54; 7 Geo. Wash. L. Rev. 234, 241.)

But this point is for the present settled by the Bridges case, and must be accepted as the basis of decision in the instant case. Conceding the power, therefore, a problem of equal importance and perhaps greater difficulty arises in defining its scope. The test adopted by the majority [fol. 259] opinion is the tendency of the publication to influence the proceeding. Under this test the inquiry is not as to what happened, but as to what might have happened. It is the supposed tendency of the publication to affect and

not its actual effect which is involved. It is not the trial judge himself, but an hypothetical judge with whom the test is concerned. Denial by the accused of any intention to influence is futile, since the tendency alone is considered. Denial by the judge that he was in fact influenced is likewise no defense, and indeed is not even relevant. It is not material to inquire whether the publication was seen or read by the judge or jury, since this would throw light only upon its actual effect.

This test is so vague and elastic, varying with the viewpoint of the individual judge who cites the offender, that it necessarily places an unreasonable restraint upon free speech and press. In the first place, the establishment of so loose a rule provides a temptation for the judge to invoke the power over contempt as a means of prohibiting political or personal attacks upon him or his views. We are all well aware of the constantly broadening scope of the judiciary as an interpreter of constitutional and statutory policies in the field of government, and there is grave danger in permitting a court to ward off criticisms directed at its policies, under the guise of protecting a particular court proceeding from improper influences. As Mr. Chief Justice Taft said, concurring in Craig v. Hecht, 263 U. S. 255, 279: "* * * the delicacy there is in the judge's deciding whether an attack upon his own judicial action is mere criticism or real obstruction, and the possibility that impulse may incline his view to personal vindication, are manifest."

[fol. 260] In the second place the test permits the placing of restraints on speech and press as varied as the sensitivities of a particular judge. The present case furnishes us an excellent example of the confusion thus engendered. The Los Angeles Bar Association Committee, the trial judge and this court do not agree on the character of certain of the publications. The necessary result of such differences of opinion is to cause critics and commentators to limit or entirely forego their public function rather than to risk the uncertainties of contempt charges by temperamental judges.

In sharp contrast is the view of a few courts and nearly all of the writers that the publication should not be considered contemptuous unless it actually interferes with the orderly administration of justice. Under this test no remote possibility or tendency toward obstruction is sufficient.

Nor is the effect of the publication on a weak judge or a purely hypothetical judge the controlling factor. The judge is assumed to be possessed of a character commensurate with his position, and able to withstand the incidental effects of free public discussion of issues involved in a judicial proceeding. This attitude is well stated in Mr. Justice Holmes' dissenting opinion in Toledo Newspaper Company v. United States, 247 U. S. 402. And in the leading case of State v. American News Company (S. D.), 266 N. W. 827, 833, the court said:

"We believe that any publication to be punishable as contempt, should be embarrassing or obstructive to the administration of justice in a pending case, and obstructive in fact rather than in theory or by possibility. * * * We think the courts should reserve the use of the weapon of contempt for such publications as can fairly and reasonably [fol. 261] be said likely in point of actual fact to intimidate, influence, impede, embarrass, or obstruct the court in the due administration of justice in an actually pending matter. And we entertain the opinion that if error is made in either direction in determining that question, it is better and wiser to err in favor of absolute and unrestricted freedom of speech rather than in the other direction."

It seems to me that if we are to accept the doctrine of summary punishment for constructive contempt, the extraordinary power thus created and applied in defiance of the legislative will should be used sparingly and cautiously. We should not ignore the growing suspicion that courts are prone to place their own security above all other considerations. We should recognize the importance, indeed, the vital necessity of the fullest comment and criticism in matters of public interest, and not seek to exempt the courts from such criticism. The course of reform in the judicial field itself depends in part upon a free and vigorous press which should not hesitate to condemn where it finds the actions of the court subject to condemnation, and the editorial page cannot be confined to abstract academic discussion of non-controversial matters or of issues long dead. In short, we must look frankly at the realities; we must remember that many factors consciously or unconsciously influence judges, and that some are accepted as normal or unavoidable. We should apply the summary power, if at

all, only to those publications which appear to ordinary persons intended and calculated to work an unmistakable and unjustifiable influence upon a particular case.

In reading over the editorials adjudged contemptuous in the present proceedings, it is difficult to perceive the manner in which they were found to constitute an improper [fol. 262] interference with the administration of justice. Not one of them appeared until the verdict of the jury had been rendered after the conclusion of the trial. It was not proved that they were intended to exercise a prejudicial influence on the judge, nor that he saw or read them. The asserted contempt is derived entirely from the supposed tendency of the language used. We should expect, therefore, to find in them some formidable threat or intimidation, or at least some demands on the judge for specific action, coupled with suggestions of reprisal if the demands go unheeded. But these writings are not of this character.

The first editorial "Sit-Strikers Convicted" commends the conviction of certain persons as a victory for law and order and expresses pride in the functioning of local courts and juries. It refers to a radio address made by the district attorney and quotes a statement made by him congratulating the jury on one of the "most far reaching verdicts in the history of this country". There is certainly nothing in this editorial which should influence any judge in the performance of his duty.

The second editorial "The Fall of an Ex-Queen" is a brief and penetrating commentary on the political activities of Helen M. Werner. The subject of the editorial is used as an object lesson and the principal thought expressed therein is that political bosses rise and fall with changing times. I cannot find anything in this editorial which can be said to have even a remote tendency to obstruct the administration of justice or to influence or embarrass any judge.

The third editorial is entitled "Probation for Gorillas?" It is a denunciation of certain defendants found guilty of [fol. 263] deadly assaults in connection with a labor dispute. It abounds with such scathing terms as "wrecking crew", "sluggers for pay" and "thugs"; it urges that an example be made of them, and adds: "Judge A. A. Scott will make a serious mistake if he grants probation" to

these men. Now this is strong language, and the statement just quoted was ill advised and unfortunate, but it does not necessarily follow that it was contemptuous. The publisher's affidavit calls attention to the familiar fact that in probation proceedings outside opinions and recommendations are invited. It is further pointed out that a former Presiding Judge of the superior court advised the Times that a criticism of a certain probation order published after it was granted, should have been made while the matter was pending. It appears that the Times has blundered in following the example of a district attorney, and in taking the suggestion of a superior court judge, with reference to the propriety of commenting on judicial proceedings.

Consider, however, the character of the case, and the circumstances surrounding it. This was no everyday affair, but one in which the public interest was aroused, and the events were widely discussed in the community. The views expressed by the Times were those held and freely expressed by many others. The attitude of the Times is made abundantly clear, and its bitter feeling toward certain labor leaders colors its opinions, but what of that? The Times is not on trial for its opinions; its readers will judge those for themselves. The Times is charged with obstructing [fol. 264] justice and interfering with a pending judicial proceeding, and there is no evidence whatever of such obstruction or interference. The case had been tried, and verdict rendered; the jury was gone, and matters of sentence and probation were before the judge alone. In deciding these matters the judge has few, if any definite rules to guide him; he is influenced by countless experiences and observations, as well as by the total sum of impressions received from public and private comment on similar problems throughout his judicial life. In this group of impressions the present editorial, if actually seen and read, could hardly be said to occupy such a dominant place as to be obstructive or embarrassing.

And what if the judge was, in fact, aware of the views expressed in the third editorial; can it be said he was being informed for the first time of the position of the Times in cases of this character? Could there be any possible doubt in the mind of any informed resident of Los Angeles on the attitude of the Times in regard to the use of violence in labor disputes. The position maintained by the Times over

many years on these matters is clearly established by the record. Its Los Angeles readers would find nothing unusual in the editorial; a judge who felt that it was obstructive or embarrassing would have to confess ignorance of one of the most familiar facts of the daily life of his community. [fol. 265] If the power over contempt is to be fairly and reasonably applied, two essential limitations on the test of constructive contempt must be recognized. First, it should be applied only to those publications of an unusual and abnormal character, those which to a layman are obviously improper and dangerous, because vindictive, threatening or inciting to violence. It should be inapplicable to comments of the usual, normal and expected type which the ordinary intelligent layman constantly meets with in the public press, the radio and informal discussion. Second, it should be applied only where it clearly appears that the publication was intended to reach the particular judge and was seen and read by him; and then only where it was of such a nature as to influence improperly a judge of ordinary firmness. We should assume that judges specially chosen for their important positions are capable of maintaining an impartiality and independence where others might weaken; we should realize that a judge of ordinary firmness should be a person of exceptional independence and integrity, immune from all but extraordinary influences.

Finally, in determining whether there is a tendency to obstruct justice, we would give due consideration to the stage of the case at which the publication occurs. When a period of relative finality is reached, as by the rendition of a jury's verdict, the dangers of outside influence have been reduced to a minimum, and comment thereafter should be freely permitted. At this stage, the newspapers must fulfill their proper function of criticism, and if they fail to comment when a matter is timely, they will be ignored when their belated observations are eventually made. To say [fol. 266] that a case is pending until its final adjudication is to state a legal platitude in place of a practical doctrine. If the case is beyond the reach of discussion even after a jury's verdict, and until the final conclusion of proceedings for probation, new trial and appeal, there can never be anything of value in public discussion of such matters. In truth, both from the point of view of the law and practice,

no such theory is followed. The are but few cases which hold that comment after a jury's verdict and before sentence or judgment on appeal is contemptuous. (See 48 Yale L. J. 54, 61.)

Viewed in retrospect, these contempt charges were a regrettable mištake. No evidence of actual interference with any legal proceeding was produced. Nothing in the editorials was intended or calculated to thwart the rendition of impartial justice in the matters then before the court. No judge seems to have felt the pressure of improper influences. No disturbance of judicial calm occurred until after the accusations were filed.

All this is indicative of the lengths to which imagination may go in building groundless fears and in imputing potent and obstructive purposes foreign to the intent of the writer. I think that by our decision in this and the Bridges case we have sacrificed a substantial part of our cherished freedom of speech and press in order t stamp out an evil that does not exist.

The judgments should be reversed.

Gibson, J.

[fol. 267] IN SUPREME COURT OF CALIFORNIA

L. A. 16928—Times-Mirror Co. vs. Superior Court, L. A.
L. A. 16929—Times-Mirror Co. vs. Superior Court, L. A.

JUDGMENT

It is ordered that the judgment of the trial court in case L. A. 16928 be and the same is hereby affirmed, and that the judgment in case, L. A. No. 16929, be and the same is hereby reversed.

Curtis, J.

We concur:
Shenk, J.
Carter, J.
Waste, C. J.
Pullen, J. pro tem.

Dissenting opinion by Edmonds, J.
Dissenting opinion by Gibson, J.

January 31, 1949.

IN SUPREME COURT OF CALIFORNIA

L. A. 16928—Times-Mirror Co. vs. Superior Court, L. A.

ORDER DENYING REHEARING

By the Court:

The petition for a rehearing herein is denied, Edmonds, J. and Gibson, J. voting for a rehearing.

Dated: February 29, 1940.

Waste, C. J.

[fol. 268] IN SUPREME COURT OF CALIFORNIA

L. A. No. 16928

[Title omitted]

PETITION FOR ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT

To Honorable William H. Waste, Chief Justice of the Supreme Court of the State of California:

Come now the petitioners herein, The Times-Mirror Company and L. D. Hotchkiss, and respectfully pray that an order be entered by the court in the above entitled cause staying execution and enforcement of judgment herein until and including three months after the order denying rehearing (if such rehearing be denied), and thereafter until final disposition of said cause by the Surpeme Court of the United States, in case on or before said date petitioners shall docket with the Clerk of said Supreme Court a petition for writ of certiorari, and in support of this motion petitioners represent as follows:

If petition for rehearing be denied, petitioners in good faith presently intend to file in the Supreme Court of the United States a petition for writ of certiorari in this cause as provided by the statutes of the United States in such cases made and provided, and in accordance with the rules of said Supreme Court.

Dated February 26, 1940.

The Times-Mirror Company and L. D. Hotchkiss, Petitioners, By Cosgrove & O'Neil, T. B. Cosgrove, F. B. Yoakum, Jr., By T. B. Cosgrove, Their Attorneys.

[fol. 269] IN SUPREME COURT OF CALIFORNIA

L. A. No. 16928

[Title omitted]

ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT

Upon application of The Times-Mirror Company and L. D. Hotchkiss, by and through their counsel, for a stay of execution and enforcement of judgment of this court in the above entitled cause, to enable The Times-Mirror Company and L. D. Hotchkiss to apply for and obtain a writ of certiorari in the Supreme Court of the United States, and good cause appearing therefor,

It is Ordered that the execution and enforcement of said judgment be and the same hereby are stayed until June 1, 1940, to enable said The Times-Mirror Company and L. D. Hotchkiss to apply for and obtain a writ of certiorari in the Supreme Court of the United States.

It is Further Ordered that the aforesaid stay shall be continued in effect until final disposition of said cause by the Supreme Court of the United States in the event that on or before said June 1, 1940, there has been docketed with the Clerk of said Supreme Court the petition of The Times-Mirror Company and L. D. Hotchkiss for writ of certiorari.

Dated February 29, 1940.

William H. Waste, Chief Justice.

[fol. 270] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 271] IN SUPREME COURT OF THE UNITED STATES

STIPULATION RE PRINTING RECORD UNDER RULE 38(8), UNITED STATES SUPREME COURT RULES

It is Hereby Stipulated that the following portions of the typewritten Transcript of Record may be omitted from the printed record:

[fol. 272] 1. Page 31.

2. Pages 47 to 64, inclusive.

3. That portion of page 99, commencing with Roman Numeral "I", following "Writ of Review", to that portion

of page 106 ending with "People v. Fields, 131 Cal. App. 56, 57."

4. Page 107, and that portion of page 108 ending with "Commercial Bank v. Superior Court, 192 Cal. 395, 397."

5. Pages 111 and 112.

6. Page 115.

7. Page 117.

8. Page 119.

9. Page 140.

10. Pages 147 to 168, inclusive.

11. Pages 174 to 177, inclusive.

12. Pages 180 and 181.

13. Page 182, lines 14 to 22, inclusive.

14. Page 183, lines 11 to 19, inclusive.

15. Page 184, lines 19 to 26, inclusive.

16. Page 185, lines 15 to 22, inclusive.

17. Page 186, lines 12 to 16, inclusive.

18. Page 187, lines 1 to 5, inclusive.

19. Page 187, lines 21 to 24, inclusive.

[fol. 273] 20. Page 189.

21. Page 191.

22. Page 225.

Dated March 30, 1940, at Los Angeles, California.

Cosgrove & O'Neil, T. B. Cosgrove, F. B. Yoakum, Jr., By T. B. Cosgrove, Attorneys for Petitioners. J. H. O'Connor, County Counsel, Douglas DeCoster, Chief Deputy County Counsel, Allen W. Ashburn, Michael G. Luddy, Isaac Pacht, Arnold Praeger, By Allen W. Ashburn, Attorneys for Respondent.

[fol. 274] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 3, 1940

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted, and the case is assigned for argument immediately following No. 75.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.